

DARJEELING GORKHA HILL COUNCIL ACT, 1988

13 of 1988

[15th October, 1988]

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DARJEELING GORKHA HILL COUNCIL ACT, 1988

13 of 1988

[15th October, 1988]

An Act to provide for the establishment of a¹[an autonomous Council] for the hill areas of the district of Darjeeling and for certain matters incidental thereto and connected therewith. WHEREAS it is expedient to provide for the establishment of an autonomous Council for the social, economic, educational and cultural advancement of the Gorkhas and other sections of the people residing in the hill areas of the district of Darjeeling; It is hereby enacted as follows :

CHAPTER 1

Preliminary

1. Short title and commencement :-

(1) This Act may be called the ¹ [Darjeeling Gorkha Autonomous Hill Council] Act, 1988.

(2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

1. Words subst. for the words "Darjeeling Gorkha Hill Council" by W.B. Act 21 of 2000.

2. Definitions :-

In this Act, unless the context otherwise requires,

(a) "constituency" means a constituency provided by an order made under section 6 for the purpose of election to the General Council;

¹(a1) "Council" means the Executive Council;

(b) "Council Fund" means the fund constituted under section 52;

¹(b1) Councillor" means a member of the General Council;

(c) "election" includes general election and also an election to fill a seat or seats in the General Council;

(d) "elector" in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force;

(e) "Executive Council" means the Executive Council of the General Council constituted under section 38;

³(e1) "Executive Councillor" means the person nominated under clause (a) or clause (6) of sub-section (1) of section 38, and includes the Chief Executive Councillor or the Vice-Chairman of the General Council;

(f) "General Council" means the ⁴[Darjeeling Gorkha Autonomous Hill Council] constituted under this Act;

(g) "Government" means the Government of the State of West Bengal;

(h) "Gram Panchayat" means a Gram Panchayat constituted under section 4 of the West Bengal Panchayat Act, 1973;

(i) "hill areas" means the territory comprising the three hill subdivisions of the district of Darjeeling, namely, Darjeeling, Kalimpong and Kurseong, and includes the following mouzas in the sub-division of Siliguri of that district :

(1) Lohagarh Tea Garden,

(2) Lohagarh Forest,

(3) Rangmohan,

(4) Barachenga,

(5) Panighata,

(6) Chota Adalpur,

(7) Paharu,

(8) Sukna Forest,

(9) Sukna Part I,

(10) Pantapati Forest I,

(11) Mahanadi Forest,

(12) Champasari Forest, ⁵* *

(13) Salbari Chhat ⁶[Part II, and]

⁷(14) Sittong Forest;

⁸ * * * *

(k) "municipality" has the same meaning as in the Bengal Municipal Act, 1932;

(l) "Official Gazette" means the Calcutta Gazette published by the Government;

(m) "Panchayat Samiti" means a Panchayat Samiti constituted under section 94 of the West Bengal Panchayat Act, 1973;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "State Planning Board" means the West Bengal State Planning Board established by the Government;

(p) "Zilla Parishad" means a Zilla Parishad constituted under section 140 of the West Bengal Panchayat Act, 1973;

1. Clauses (a1) and (b1) inst. by W.B. Act 3 of 1994.

3. Clause (e1) inst. by W.B. Act 3 of 1994.

4. Words subst. for the words "Darjeeling Gorkha Hill Council" by W.B. Act 21 of 2000.

5. Word "and" omitted by W.B. Act 21 of 2000.

6. Words and figures subst. for the words and figures "Part II" by W.B. Act 21 of 2000.

7. Sub-clause (14) inst. by W.B. Act 21 of 2000.

8. Clause (j) omitted by W.B. Act 3 of 1994.

3. General Council :-

(1) There shall be a General Council comprising the hill areas in the district of Darjeeling.

(2) The General Council shall be constituted in the manner provided in this Chapter and shall exercise such powers and perform such functions as are provided in Chapter II.

4. Incorporation of General Council :-

The General Council shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract, and shall, by its corporate

name, sue and be sued.

5. Constitution and composition of General Council :-

(1) The General Council shall consist of forty-two ¹[Councillors] of whom two-thirds shall be elected, on the basis of adult suffrage, from the territorial constituencies referred to in section 6 and one-third shall be ¹[nominated].

³(1A) Of the nominated Councillors, eleven shall be nominated by the Government and three shall be nominated by the Chairman of the General Council.

⁴(2) Subject to the provisions of sub-section (1A), the Councillors to be nominated by the Government may include

(a) all or any of the members of the Legislative Assembly of the State of West Bengal elected from the constituencies of Darjeeling, Kurseong and Kalimpong,

(b) the member elected to the House of the People from the Darjeeling Parliamentary constituency, or

(c) all or any of the Chairmen of the Municipalities within the Hill Areas.

⁵ (3) The Government may provide for due representation of minorities, Scheduled Castes, Scheduled Tribes and women, while nominating the remaining Councillors.

1. Word subst. by W.B. Act 3 of 1994.

3. Sub-sec. (1A) inst. by W.B. Act 3 of 1994.

4. Sub-secs. (2) and (3) subst. by W.B. Act 3 of 1994.

5. Sub-secs. (2) and (3) subst. by W.B. Act 3 of 1994.

6. Delimitation of constituencies :-

(1) There shall be 28 constituencies covering the hill areas for election to the General Council. Each constituency shall be a single member constituency and shall be territorial.

(2) The Government shall, by order published in the Official Gazette, determine the territorial limits of constituencies into which the hill areas shall be delimited for the purpose of election of members to the General Council.

7. Power to alter or amend delimitation :-

The Government may, from time to time, by order published in the

Official Gazette, alter or amend any order made under section 6.

8. Qualification for membership of General Council :-

A person shall not be qualified to be elected as a ¹[Councillor] of the General Council unless he is an elector ² [from any one of the constituencies referred to in section 6].

1. Word subst. by W.B. Act 3 of 1994.

2. Words and figure subst. by W.B. Act 5 of 1989.

9. Disqualification of 7[Councillors] :-

(1) A person shall not be qualified for being elected to the General Council if

(a) he is not a citizen of India; or

(b) he is less than 21 years of age * *****; or

(c) he has been elected to any municipality, Panchayat Samiti or Gram Panchayat within the hill areas of Darjeeling; or

(d) he is in service of the Central or the State Government or a Gram Panchayat or a Panchayat Samiti or a municipal authority; or

(e) he has, directly or indirectly by himself or by his partner or employer or employee, any share, or interest in any contract with, by or on behalf of the General Council or a municipality or a Panchayat Samiti or a Gram Panchayat within the hill areas of Darjeeling :

Provided that no person shall be deemed to be so disqualified by reason only of his having a share or interest in any public company, as defined in the Companies Act, 1956, which contracts with or is employed by a Gram Panchayat, a Panchayat Samiti, or a municipal authority within the hill areas of Darjeeling or the General Council; or

(f) he has been dismissed from the service of the Central or the 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

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

(h) he is an undischarged insolvent; or

(i) he being a discharged insolvent has not obtained from the Court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or

(j) 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 IXA of the Indian Penal Code or section 3 or section 9 of the West Bengal Local Bodies (Electoral Offences and Miscellaneous Provisions) Act, 1952 or Chapter III of Part VII of the Representation of the People Act, 1951 and five years have not elapsed from the date of expiration of the sentence.

(2) For the purposes of this section, a person shall not be deemed to hold an office of profit under the General Council by reason only of his being a ¹ [Councillor], Chief Executive Councillor or Vice-Chairman thereof.

1. Word subst. by W.B. Act 3 of 1994.

10. Electoral rolls :-

(1) So much of the electoral roll for any Assembly Constituency in force on the last date of nominations for the General Council election as relates to the area comprised within a constituency as defined in clause (a) of section 2 shall, subject to the provisions of this Act and the rules made thereunder, be the electoral roll for the election of ¹[Councillors] from the constituency.

(2) Persons whose names are included in the electoral rolls of the relevant Assembly constituencies in force on the last date of nominations for General Council election pertaining to the hill areas of the district of Darjeeling shall be the electorate for the election of ¹ [Councillors].

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

1. Word subst. by W.B. Act 3 of 1994.

11. Right to vote :-

(1) Save as otherwise provided in this Act, every person whose name is, for the time being, entered in the electoral roll of any

constituency within the hill areas 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 disqualifications referred to in section 16 of the Representation of the People Act, 1950.

(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 transportation or otherwise, or is in the lawful custody of the 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.

12. Election of 11[Councillors] :-

Election of ¹ [Councillors] shall be held in accordance with the rules made under section 19 and the first election for the purpose of constituting the General Council shall be held on such date or dates as the Government may prescribe.

1. Word subst. by W.B. Act 3 of 1994.

13. General Election to General Council :-

(1) A general election subsequent to the first election shall be held for the purpose of constituting a new General Council before the expiration of the term of office of the ¹[Councillors] as specified in section 17 or, in the case of its earlier dissolution, soon after such dissolution, on such day or days within a period of six months as the Government may fix.

(2) The Government may issue such orders as it may consider necessary or expedient to give effect to the provisions of this Act in regard to the holding of the first election referred to in section 12 and in regard to any matter connected therewith or incidental thereto.

(3) If the office of an elected or nominated 11[Councillors] becomes vacant by reason of his death, resignation or otherwise, the vacancy shall be filled by election or nomination, as the case may be, in accordance with the provisions of this Act and the rules made thereunder.

²(4) If a person is elected to more than one seat in the General Council, then, unless within a period of thirty days from the last of the dates of election of such person he resigns all but one of the seats by writing under his hand addressed to the election authority referred to in clause (b) of section 19, all the seats shall become vacant.

² (5) For the purposes of sub-section (4) of this section and sub-sections (2) and (3) of section 16, the date on which a person is declared by the returning officer to be elected to the General Council, shall be the date of his election.

1. Word subst. by W.B. Act 3 of 1994.

2. Sub-sees. (4) and (5) inst. by W.B. Act 5 of 1989.

14. Validation :-

Where the ¹[Councillors] elected at a general election are restrained from functioning on account of the election as a whole being set aside by order of a Court, anything done or any action taken by such ¹ [Councillors] 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.

1. Word subst. by W.B. Act 3 of 1994.

15. Publication of results of elections :-

(1) The names of all persons elected ¹* * * * * to the General Council shall be published by the Government in the Official Gazette and upon such publication, ²[the General Council shall, notwithstanding anything contained elsewhere in this Act, be deemed] to have been duly constituted.

³ (2) The names of persons nominated to the General Council by the Government or the Chairman of the General Council, as the case may be, shall be published by the Government in the Official Gazette.

1. Words omitted by W.B. Act 3 of 1994.

2. Words subst. by W.B. Act 3 of 1994.

3. Sub-sec. (2) inst. by W.B. Act 3 of 1994.

16. Vacation of seat :-

¹

(1) If an ²[elected Councillor] is chosen to be a member of Parliament or of the State Legislature then, at the expiration of

fourteen days from the date of publication in the Gazette of India or the Official Gazette of the declaration that he has been so chosen, the seat of ²[such Councillor] in the General Council shall become vacant unless he has previously registered his seat in Parliament or the State Legislature, as the case may be.

⁴(1A) If a member of Parliament or of the State Legislature is elected as a Councillor then, at the expiration of fourteen days from the date of publication in the Official Gazette of the declaration that he has been so elected, the seat of such Councillor in the General Council shall become vacant, and he shall be debarred from contesting any election to the General Council for a period of ten years unless he has previously resigned his seat in Parliament or the State Legislature, as the case may be.

⁵(2) If any ⁶[Councillor] fails to make and subscribe within three months from the date of his election or nomination to the General Council an oath or affirmation in accordance with the provisions of ⁷[section 21 or sub-section (7) of section 34,] then, at the expiration of the said period, the seat of such ⁵[Councillor] in the General Council shall become vacant.

⁴(3) If a person who is already nominated to the General Council and has taken his seat in the General Council is elected to the General Council, ¹⁰ [Councillor] shall, on the date of his election, become vacant.

1. Sec. 16 renumbered as sub-sec. (1) of that sec. by W.B. Act 5 of 1989.

2. Words subst. by W.B. Act 3 of 1994.

4. Sub-sec. (1A) inst. by W.B. Act 3 of 1994.

5. Sub-sees. (2) and (3) inst. by W.B. Act 5 of 1989.

6. Word subst. by W.B. Act 3 of 1994.

7. Words, figures and brackets subst. by W. B. Act 3 of 1994.

10. Word subst. by W.B. Act 3 of 1994.

17. Term of office of 22[Councillors] :-

(1) The elected 22[Councillors] shall hold office for a period of five years from the date appointed by the Government for the first meeting of the General Council after the general election for constitution of the General Council, unless it is dissolved earlier under section 61 :

Provided that the said period of five years may, if the circumstances exist which, in the opinion of the Government,

render the holding of the election as aforesaid impracticable, be extended by the Government for a period not exceeding one year.

¹(2) An elected Councillor, other than the Chairman and Chief Executive Councillor of the General Council, shall cease to hold office if

(a) he ceases to be a Councillor, or

(b) he resigns his office in writing under his hand addressed to the Chairman of the General Council, in which case the resignation shall take effect from the date of its acceptance by the General Council.

¹ (3) A nominated Councillor shall hold office until

(a) he resigns his office in writing under his hand addressed to the Government, if he is nominated by the Government, or to the Chairman of the General Council, if he is nominated by him, and, in each such case, the resignation shall take effect from the date of its acceptance by the Government or the Chairman of the General Council, as the case may be, or

(b) his nomination is cancelled by the Government, if he is nominated by the Government, or by the Chairman of the General Council, if he is nominated by him, or

(c) a fresh nomination is made in his place by the Government, if he is nominated by the Government, or by the Chairman of the General Council, if he is nominated by him, or

(d) a new General Council is constituted after a General Election held under sub-section (1) of section 13.

1. Sub-sees. (2) and (3) subst. for original sub-sec. (2) by W.B. Act 3 of 1994.

18. Disqualifications of 24[Councillors] :-

(1) The Government may, after giving an opportunity to an ¹[elected Councillor] to show cause against the action proposed to be taken against him, by order remove him from office

(a) if after his election he is convicted by a criminal court of an offence involving moral turpitude punishable with imprisonment for a period of more than six months; or

(b) if he incurs any of the disqualifications mentioned in sub-section (1) of section 9 after his election as ²[a Councillor]; or

(c) if he is absent from three consecutive meetings of the General Council without the leave of the General Council; or

(d) if he does not pay any arrear in respect of any tax, toll, fee or rate payable under this Act or the Bengal Village Self-Government Act, 1919, or the West Bengal Panchayat Act, 1957.

(2) ² [Any Councillor] who is removed from his office under sub-section (1) may, within thirty days from the date of the order, appeal to such authority as the Government may appoint in this behalf, and, thereupon, the authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to such authority as may be prescribed and after giving the appellant an opportunity of being heard, modify, set aside or confirm the order.

(3) The order passed by the authority appointed under sub-section (2) on such appeal shall be final.

1. Words subst. by W.B. Act 3 of 1994.

2. Words subst. by W.B. Act 3 of 1994.

18A. Disqualification on change of political party by Councillors :-

1

(1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, the prescribed authority for the General Council (hereinafter referred to as the prescribed authority) may, subject to the other provisions of this section, declare, for reasons to be recorded in writing, a Councillor to be disqualified for being a Councillor thereof, if

(a) he is an elected Councillor set up by a recognised political party and has

(i) voluntarily given up his membership of such recognised political party, or

(ii) exercised the voting right contrary to the manner of voting of the majority Councillors set up by such recognised political party; or

(b) he is an elected Councillor not set up by an recognised political party and has joined a recognised political party on the expiry of six months from the date of election : Provided that the prescribed authority shall not declare any Councillor to be disqualified under

this section without giving to such Councillor a reasonable opportunity to represent his case and to be heard in person :

Provided further that an elected Councillor referred to in sub-clause (ii) of clause (a) shall not, on the prescribed authority being satisfied in this behalf, be declared to be disqualified if

(a) the action of such Councillor was taken on obtaining prior permission of, or was condoned by, such recognised political party, or

(b) such Councillor claims that he and any other Councillor of such recognised political party constitute a group representing a faction consisting of not less than one-third of the total number of Councillors set up by such recognised political party in the General Council and that all the Councillors set up by such group have voluntarily given up their councillorship of such recognised political party, or

(c) the former recognised political party of the Councillor merges with another recognised political party, and he claims that he and other Councillors of his former recognised political party

(i) have become Councillors of such other recognised political party or of a new recognised political party formed out of merger, as the case may be, or

(ii) have not accepted the merger, and from the time of such merger, he and such other Councillors constituting not less than one third of the total number of members set up by the former recognised political party in the General Council, have opted to remain members of the former recognised political party or have formed a new recognised political party.

(2) On being declared to be disqualified under sub-section (1), a Councillor shall, subject to the provisions of sub-section (12), stand removed from the General Council from the date of such declaration.

(3) As soon as may be within one month from the date of the first meeting of a General Council or within one month from the date on which this section comes into force, as the case may be, elected Councillors set up by the recognised political parties shall, by adopting a resolution, select one Councillor from amongst themselves to be the Leader and such Leader shall, within fifteen

days from the date of such selection, furnish to the prescribed authority referred to in sub-section (1)

(i) a copy of the resolution,

(ii) a signed statement containing the names, addresses and constituencies of himself and other members set up by such recognised political party, and

(iii) a copy of a set of rules and regulations, if any, by whatever name called, of such recognised political party:

Provided that an office-bearer may also hold the office of the Leader.

(4) Where there is only one elected Councillor set up by a recognised political party in a General Council, he shall furnish the documents referred to in sub-section (3) in relation to himself: Provided that in the event of any increase in the number of Councillors of such recognised political party, the provisions of sub-section (3) shall apply as if the first meeting of the General Council was held or this section came into force, as the case may be, on the date on which such increase took place.

(5) A Councillor not belonging to any recognised political party shall furnish a statement to that effect to the prescribed authority referred to in sub-section (1) within one month from the date of the first meeting of the General Council.

(6) In the event of any change of the information furnished under sub-section (3), sub-section (4) or sub-section (5), the Leader or the member, as the case may be, shall, as soon as may be within fifteen days from the date of such change, furnish in writing such change of information to the prescribed authority referred to in sub-section (1).

(7) The Leader of any recognised political party referred to in sub-section (3) may at any time file a petition endorsed by the General Secretary, or, if there is no General Secretary, the Secretary, of the district unit of such recognised political party to the prescribed authority referred to in sub-section (1), stating that

(a) one or more member of such recognised political party have

(i) voluntarily given up his or their membership of such recognised political party, or

(ii) have exercised the voting right contrary to the manner of voting of the majority members set up by such recognised political party in the General Council, or

(b) the member referred to in sub-section (4) has voluntarily given up his membership of the recognised political party that set him up, or

(c) the member referred to in sub-section (5) has joined a recognised political party on the expiry of six months from the date of election, and that such member or members should be declared to be disqualified under sub-section (1) and should be removed from the General Council.

(8) Every petition referred to in sub-section (7)

(a) shall contain a concise statement of the material facts on which the petitioner relies, and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and, where the petitioner relies on any information furnished to him by any person or persons, a statement containing the names and addresses of such person or persons and the gist of such information as furnished by such person or each of such persons.

(9) On receipt of the petition referred to in sub-section (7), the prescribed authority referred to in sub-section (1) shall, as soon as possible within six weeks from the date of the receipt of such petition, proceed to make any enquiry to satisfy himself, among others, as to

(a) the common decision in regard to the manner of voting to be exercised by the majority members set up by the recognised political party, and

(b) whether the member or members against whom such petition is filed, exercised the voting right, in a meeting of the General Council contrary to such manner of voting.

(10) For the purpose of enquiry under sub-section (9), the prescribed authority may summon such members of the recognised political party or other persons, and require such signed statements from, and production of such documents and records by, the member or other persons as aforesaid, as he may deem necessary.

(11) As soon as possible within eight weeks from the date of receipt of the petition referred to in sub-section (7), the prescribed authority shall, in consideration of the facts and the documents and the records before it,

(a) reject the petition, or

(b) admit the petition wholly or in part and declare any Councillor or Councillors to be disqualified under sub-section (1) for being Councillor.

(12) Any Councillor declared disqualified under sub-section (1) or the Leader of the recognised political party referred to in sub-section (7), if aggrieved by the decision of the prescribed authority, may, within thirty days from the date of the order, appeal to such authority as the State Government may appoint in this behalf, and, thereupon, the authority so appointed may stay the operation of the order till the disposal of the appeal and may, after giving notice of the appeal to the prescribed authority, and after giving the appellant an opportunity of being heard, set aside or confirm the order or declare under sub-section (1) any Councillor or Councillors to be disqualified for being Councillor or Councillors.

(13) The order passed by the authority appointed under sub-section (12) on the appeal shall be final.

(14) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, no court shall have any jurisdiction in respect of any matter arising out of a Councillor being declared to be disqualified under sub-section (1) for being a Councillor.

(15) The State Government may, by notification published in the Official Gazette, make rules for carrying out the purposes of this section. Explanation I. For the purposes of this section, an elected Councillor shall be deemed to be set up by a recognised political party if he has contested election with symbol reserved for such recognised political party or if he has contested election with a free symbol and joins a recognised political party and furnishes a declaration to that effect to the prescribed authority before the expiry of six months from the date of election. Explanation II. "Prescribed authority for the General Council" shall mean an authority appointed by the State Government by notification published in the Official Gazette for the purposes of this section.

1. Sec. 18A inst. by W.B. Act 20 of 1996.

19. Power to make rules regulating the election of 28[Councillors] :-

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 of elections 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 constituencies under sub-section (2) of section 6 may be delegated and the officer or authority who may prepare and maintain the electoral roll under section 10;

¹(b) the appointment of election authority, election officer, returning officers, presiding officers and polling officers for election and their powers, functions and duties ;

(c) the drawing up of the programme of election ;

(d) the nomination of candidates and the scrutiny of such nomination;

(e) the deposits to be made by candidates and the time and manner of making such deposits;

(f) the withdrawal of candidatures;

(g) the appointment of agents of candidates;

(h) the filling up of casual vacancy;

(i) the general procedure at the election including the time, place and hours of poll and the method by which votes shall be cast;

(j) the fee to be paid on an election petition;

² (jj) the requisitioning of vehicles and premises in connection with the conduct of elections and the penalty for contravention of any order regarding such requisitioning;

(k) any other matter relating to election or election disputes in respect of which the Government deems it necessary to make

1. Clause (b) subst. by W.B. Act 5 of 1989.

2. Clause (jj) inst. by W.B. Act 5 of 1989.

19A. Electoral offences :-

1

(1) For the purposes of this Act, the electoral offences provided for in sections 125 to 136 of the Representation of the People Act, 1951, shall be the electoral offences at or in connection with the elections under this Act.

(2) Any person who is guilty of an electoral offence as aforesaid shall be punishable in the same manner as is provided for in the said Act.

1. Sec. 19A inst. by W.B. Act 5 of 1989.

20. Disputes regarding elections :-

(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 a District Judge within' the meaning of article 236 of the Constitution of India shall be appointed for the purpose.

(2) No election shall be called in question except on any one 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 General Council;

(b) that a 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 the purposes of this section, "corrupt practice" shall mean any of the corrupt practices specified in section 123 of the Representation of the People Act, 1951;

(c) that any nomination has been improperly rejected;

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

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

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

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

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

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

(3) At the conclusion of the trial of an 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 candidate to have been duly elected.

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

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

(b) but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have 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.

21. Oath or affirmation by 33[Councillors] :-

¹²[Every Councillor, other than the Chairman and Chief Executive Councillor,] shall, ³⁴[before the first meeting of the General Council or as soon as thereafter,] make and subscribe before such person as may be appointed by the Government in this behalf, an oath or affirmation, and shall be given a certificate of receipt of the form of oath or affirmation as so made and subscribed, according to the form set out for the purpose in the ² [First Schedule].

1. Sec. 21 subst. by W.B. Act 5 of 1989.

2. Words subst. by W.B. Act 3 of 1994.

22. Allowances of 33[Councillors] :-

¹ [Every Councillor] shall be entitled to receive such allowances as may be fixed by the General Council and as may be approved by

the Government.

1. Words subst. by W.B. Act 3 of 1994.

CHAPTER 2

Powers and Functions of the General Council

23. Conduct of business :-

(1) The General Council shall meet for the conduct of business at least once in every three months and shall conduct its business in such manner and in accordance with such procedure as may be determined by it by regulations with the approval of the Government.

(2) The quorum necessary for the transaction of business at a meeting of the ¹[General Council] shall be ¹[fifteen Councillors] and the decision of the ¹[General Council] shall be by a simple majority of votes of the ¹ [Councillors present].

1. Words subst. by W.B. Act 3 of 1994.

24. Matters to be under the control and administration of the General Council :-

Subject to the provisions of this Act and any other law for the time being in force and any general or special direction of the Government, the General Council shall have executive powers in the hill areas in relation to

(i) the allotment, occupation or use, or setting apart, of land other than any land which is a reserved forest, for the purpose of agriculture or grazing, or for residential or other non-agricultural purposes, or for any other purpose likely to promote the interest of the inhabitants of any village, locality or town. Such allotment, occupation or use, or setting apart, of land shall be subject to the provisions of the West Bengal Land Reforms Act, 1955 and the rules made thereunder;

(ii) the management of any forest, not being a reserved forest.
Explanation. "Reserved forest" shall mean a reserved forest as constituted under the Indian Forest Act, 1927;

(iii) the use of any canal or watercourse for the purpose of agriculture;

(iv) agriculture;

(v) public health and sanitation 35[, family welfare,] hospitals and

dispensaries;

(vi) tourism;

(vii) vocational training;

¹(viii) public works;

¹(ix) roads except national highways and State highways;

(x) transport and development of transport;

(xi) management of burials and burial grounds, cremations and cremation grounds;

(xii) preservation, protection and improvement of livestock and prevention of animal diseases, veterinary training and practice;

(xiii) pounds and the prevention of cattle trespass;

(xiv) water, that is to say, water supplies, irrigation and canals, drainage and embankment, water storage;

(xv) fisheries;

(xvi) management of markets and fairs, not being already managed by municipal authorities, Panchayat Samitis or Gram Panchayats;

(xvii) education primary, secondary and higher secondary
³[including social, adult and mass education and non-formal education];

(xviii) works, lands and buildings vested in or in the possession of the General Council;

(xix) small-scale and cottage industries;

⁴(xx) sports and youth services;

³ (xxi) such other matters as the Government may, by notification in the Official Gazette, place under the control and administration of the General Council.

1. Clauses (viii) and (ix) subst. by W.B. Act 3 of 1994.

3. Words inst. by W.B. Act 3 of 1994.

4. Clauses (xx) and (xxi) inst. by W.B. Act 3 of 1994.

25. General powers :-

Subject to the general policy and direction of the Government, the General Council shall

- (i) formulate integrated development plans for the hill areas, and
- (ii) implement schemes and programmes for development of the hill areas.

26. Power to acquire, hold and dispose of property etc. to be subject to previous approval of Government :-

The power of the General Council to acquire, hold and dispose of property and to enter into contracts under section 4 shall be subject to the condition that in all cases of acquisition or disposal of immovable property, ¹ [the value of which exceeds rupees one crore or which is outside the hill areas,] the General Council shall obtain previous approval of the Government.

1. Words inst. by W.B. Act 3 of 1994.

27. Power to make by-laws :-

(1) The General Council shall have power, subject to the provisions of this Act and the rules made thereunder, to make, with the previous approval of the Government, by-laws to be applicable within the hill areas with respect to all or any of the matters enumerated in section 24 for the regulation and control thereof.

(2) All by-laws made under sub-section (1) shall have effect upon their publication in the Official Gazette.

28. Power of Government to entrust functions :-

Notwithstanding anything in this Act, the Government may, with the consent of the General Council, entrust either conditionally or unconditionally to the General Council or to its officers functions in relation to any matter, not enumerated in section 24, to which the executive power of the State extends.

29. Property vested in General Council :-

Subject to such restrictions or conditions as the Government may think fit to impose, all properties specified below and situated in the hill areas shall vest in and belong to the General Council with all other properties which may become vested in the General Council and shall be under the direction, management and control of the General Council and shall be held and applied by it for the purposes of this Act, namely :

- (a) all public buildings constructed and maintained out of the Council Fund;

(b) all public roads which have been constructed or maintained out of the Council Fund and stones and other materials thereof and also trees, erections, materials, implements and things provided for such roads;

(c) all lands and other properties, movable or immovable, transferred to the General Council by the Government;

(d) such properties owned and controlled by the Darjeeling Zilla Parishad in the hill areas of the district of Darjeeling as may be assigned to the General Council by the Government.

30. Power to impose levy and collect taxes and fees :-

(1) Notwithstanding anything contained in any other law for the time being in force, the General Council shall have power to collect within the hill areas such taxes payable under any law for the time being in force as may be prescribed :

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

(2) Subject to such maximum rates as the Government may prescribe, the General Council may

(a) levy tolls on persons, vehicles or animals or any class of them at any toll-bar established by it on any road other than a kutchra road or any bridge vested in it or under its management;

(b) levy tolls in respect of any ferry established by it or under its management;

(c) levy the following fees and rates, namely :

(i) fee on the registration of boats or vehicles;

(ii) fee for providing sanitary arrangements at such places of worship or pilgrimage, fairs and melas within its jurisdiction as may be specified by the Government by notification in the Official Gazette;

(iii) fee for licences;

(iv) water-rate, where arrangement for the supply of water for drinking, irrigation or any other purpose is made by the General Council within its jurisdiction;

(v) lighting rate, where arrangement for lighting of public streets and places is made by the General Council within its jurisdiction.

(3) The General Council shall not undertake registration of any vehicle or levy fee therefor and shall not provide sanitary arrangements at places of worship or pilgrimage, fairs and melas within its jurisdiction or levy fee therefor if such vehicle has already been registered by any other authority under any law for the time being in force or if such provision for sanitary arrangement has already been made by any other local authority.

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

31. Exercise of powers of supervision over municipalities, Panchayat Samitis and Gram Panchayats :-

(1) Notwithstanding the provisions of the West Bengal Panchayat Act, 1973 or the Bengal Municipal Act, 1932, the General Council shall exercise general powers of supervision over Panchayat Samitis, Gram Panchayats and municipalities in the hill areas, and it shall be the duty of every such Panchayat Samiti, Gram Panchayat or municipality to give effect to any direction of the General Council on matters of policy or planning for development.

(2) The General Council shall exercise all the powers of the Zilla Parishad under sections 153, 154, 155, 156, 157, 158, 159, 160, 161 and 162 of the West Bengal Panchayat Act, 1973.

32. Inspection of works of Panchayats :-

The General Council may

(a) inspect, or cause to be inspected, any immovable property used or occupied by a Panchayat Samiti under it or any work in progress under the direction of the Panchayat Samiti,

(b) inspect or examine, or depute an officer to inspect or examine, any department of the Panchayat Samiti, or any service, work or thing under the control of the Panchayat Samiti,

(c) inspect or cause to be inspected utilisation of funds in respect of schemes or programmes assigned to the Panchayat Samiti by the Government for execution either directly or through the General Council,

(d) require a Panchayat Samiti, for the purpose of inspection or examination as aforesaid,

(i) to produce any book, record, correspondence or other documents, or

(ii) to furnish any return, plan, estimate, statement, accounts or statistics, or

(iii) to furnish or obtain any report or information.

33. Disputes :-

If any dispute arises between a Gram Panchayat or a Panchayat Samiti or a municipality in the hill areas and the General Council, such dispute shall be referred by the General Council to the Government and the decision of the Government thereon shall be final.

CHAPTER 3

Chief Executive Councillor and Committees of the General Council

34. Chief Executive Councillor and Vice-Chairman :-

1

(1) The first meeting of the General Council after each general election shall be held on the date appointed by the Government under sub-section (1) of section 17.

(2) The Government may nominate one of the elected Councillors, not being a candidate for election as Chairman of the General Council, to preside over the first meeting.

(3) The outgoing Chairman and Chief Executive Councillor shall convene the first meeting of the General Council on the appointed date by sending notice, specifying therein the date, time and place of the meeting, to the registered address of each Councillor elected to the General Council at least seventy-two hours before the time fixed for such meeting:

Provided that if the outgoing Chairman and Chief Executive Councillor fails to convene the meeting on the appointed date, the Government may authorise an officer to convene the first meeting of the General Council on a date to be specified by the Government in this behalf.

(4) The election of the Chairman of the General Council shall be conducted by the elected Councillor nominated by the Government

to preside over the first meeting under sub-section (2). The elected Councillors shall, in the prescribed manner, elect from amongst themselves one Councillor to be the Chairman who shall also be the Chief Executive Councillor. The presiding Councillor shall have the right to participate in the election of the Chairman.

(5) In the case of any casual vacancy in the office of the Chairman and Chief Executive Councillor caused by death, resignation, removal or otherwise, the elected Councillors shall, in accordance with such procedure as may be prescribed, elect one of the Councillors to fill up the vacancy:

Provided that pending the election of a Chairman, the Government may appoint by name one of the Councillors to be the Chairman who shall hold office as Chairman and Chief Executive Councillor, and shall exercise all the powers and discharge all the functions of the Chairman and Chief Executive Councillor, until a Chairman, elected in accordance with the provisions of this Act and the rules made thereunder, enters upon his office.

(6) The Chief Executive Councillor may nominate one Councillor to be the Vice-Chairman.

(7) The Chief Executive Councillor shall, within one month from the date of election, make and subscribe before the Governor an oath or

1. Secs. 34 and 35 subst. by W.B. Act 3 of 1994.

35. Term of office :-

(1) The Chairman and Chief Executive Councillor

(a) shall cease to hold office as such forthwith if he ceases to be a Councillor;

(b) may, at any time, by giving notice in writing under his hand addressed to the Chief Minister, resign his office from such date as may be specified in the notice or, if no such date is specified in the notice, from the date of its acceptance by the Chief Minister;

(c) may be removed from office by a resolution carried by a majority of the total number of elected Councillors at a special meeting of the General Council called for this purpose upon a requisition made in writing by not less than one-third of such Councillors.

(2) The Vice-Chairman shall hold office until

(a) he ceases to be a Councillor, or

(b) he resigns his office in writing under his hand addressed to the Chairman of the General Council, in which case the resignation shall take effect from the date of its acceptance by the Chairman of the General Council, or

(c) his nomination as Vice-Chairman is cancelled by the Chairman of the General Council:

Provided that notwithstanding such cancellation of his nomination, he shall, subject to the other provisions of this Act, continue to hold office as a Councillor.

36. Salaries and allowances :-

The Chief Executive Councillor¹[, the Vice-Chairman and other Executive Councillors] shall be whole-time functionaries and shall be paid out of the Council Fund such salaries and allowances and shall be entitled to such leave of absence for such period or periods on such terms and conditions as may be prescribed :

² Provided that an Executive Councillor, not holding any charge of any matter or department of the Council, shall be entitled to the same status and privileges to which any other Executive Councillor is entitled.

1. Words subst. by W.B. Act 3 of 1994.

2. Proviso added by W.B. Act 3 of 1994.

37. Powers, functions and duties :-

(1) The Chief Executive Councillor shall

1 * * * * *

(b) have general responsibility for the financial and executive administration;

(c) exercise administrative supervision and control over all officers and employees of the General Council, and the officers and employees whose services may be placed at the disposal of the General Council by the Government;

(d) for the transaction of business under this Act or for the purpose of making any order under this Act, exercise such powers, perform such functions and discharge such duties as may be exercised,

performed or discharged by the General Council under this Act or the rules made thereunder :

Provided that the Chief Executive Councillor shall not exercise such powers, perform such functions or discharge such duties as may be required by the rules made under this Act to be exercised, performed or discharged by the General Council at a meeting;

(e) exercise such other powers, perform such other functions and discharge such other duties as the General Council may, by general or special resolution, direct or as the Government may, by rules made in this behalf, prescribe.

(2) The Vice-Chairman shall

(a) exercise such of the powers, perform such of the functions and discharge such of the duties of the Chief Executive Councillor as the Chief Executive Councillor may, from time to time, subject to the rules made in this behalf by the Government, delegate to him by order in writing:

Provided that the Chief Executive Councillor may at any time withdraw the powers and functions delegated to the Vice-Chairman;

(b) during the absence of the Chief Executive Councillor, exercise all the powers, perform all the functions and discharge all the duties of the Chief Executive Councillor;

(c) exercise such other powers, perform such other functions, and discharge such other duties as the General Council may, by general or special resolution, direct or as the Government may, by rules made in this behalf, prescribe.

1. Clause (a) omitted by W.B. Act 3 of 1994.

38. Executive Council :-

1

(1) There shall be an Executive Council consisting of the Chief Executive Councillor, the Vice-Chairman of the General Council and fifteen other Councillors of whom

(a) thirteen shall be nominated by the Chief Executive Councillor from amongst the elected Councillors, and

(b) two shall be nominated by the Government from amongst the nominated Councillors: Provided that no nominated Councillor, who

is in Government service, shall be eligible to be nominated as an Executive Councillor.

(2) The manner of transaction of business of the Council shall be such as may be determined by the Council by regulations with the approval of the Government.

(3) The Council shall be responsible to the General Council.

(4) No Executive Councillor shall hold any office of profit for so long as he holds the office of Executive Councillor, and no Executive Councillor or member of his family shall, either directly or indirectly,

(a) enter into any contract, or

(b) have any dealings or transaction, with the Council without the specific and prior approval of the Council.

1. Secs. 38 and 39 subst. by W.B. Act 3 of 1994.

39. Term of office of Executive Councillors :-

¹ An Executive Councillor shall hold office as Executive Councillor until

(a) he ceases to be a Councillor, or

(b) he resigns his office of Executive Councillor in writing under his hand addressed to the Government if he is nominated by the Government, or to the Chief Executive Councillor if he is nominated by him, and, in each such case, the resignation shall take effect from the date of its acceptance by the Government or the Chief Executive Councillor, as the case may be, or

(c) his nomination as Executive Councillor is cancelled by the Government if he is nominated by the Government, or by the Chief Executive Councillor if he is nominated by him, or

(d) a fresh nomination is made in his place by the Government if he is nominated by the Government, or by the Chief Executive Councillor if he is nominated by him.

1. Secs. 38 and 39 subst. by W.B. Act 3 of 1994.

40. Discharge of functions :-

(1) The executive functions of the General Council shall vest in the Executive Council.

(2) All orders or instruments made or executed by the Executive

Council shall be deemed to have been made or executed by or under the authority of the General Council. Every such order or instrument shall be authenticated by the signature of the head of the Executive Council or ¹ [any other Executive Councillor] or by any officer of the Executive Council authorised in writing by the head of the Executive Council in this behalf.

1. Words subst. by W.B. Act 3 of 1994.

41. Powers of 45[Council] :-

The ¹ [Council] shall refer to the General Council for approval the following matters, namely:

(a) all proposals for making regulations or by-laws under the provisions of this Act;

(b) all cases affecting the relations of Government with the General Council.

1. Word subst. by W.B. Act 3 of 1994.

42. General powers of Chief Executive Councillor :-

(1) The Chief Executive Councillor shall exercise such powers and discharge such functions as are conferred on him by or under this Act.

¹ (2) The Chief Executive Councillor shall make, for the convenient transaction of business of the Council, allocation among such Executive Councillors of the said business in so far as it is not business with respect to which the Chief Executive Councillor is by or under this Act required to act in his discretion as he thinks fit.

1. Sub-sec. (2) subst. by W.B. Act 3 of 1994.

43. Meetings :-

The Chief Executive Councillor shall preside over the meetings of the General Council and the ¹[Council]. The ¹ [Council] shall meet not less than once in every month for the transaction of business at such place and at such time as the Chief Executive Councillor may direct.

1. Word subst. by W.B. Act 3 of 1994.

44. Quorum :-

The quorum necessary for the transaction of business at a meeting of the ¹[Council] shall be ² [nine Councillors].

1. Word subst. by W.B. Act 3 of 1994.
2. Words subst. by W.B. Act 3 of 1994.

45. Special powers of Chief Executive Councillor :-

(1) In any case in which the Chief Executive Councillor is required to take, in accordance with the provisions of this Act or the rules made thereunder or of any other law for the time being in force, any action subject to the approval of the ¹[Council], the ¹[Council] may, subject to such conditions, if any, as it may specify, authorise the Chief Executive Councillor in writing to take such action in anticipation of such approval.

(2) Whenever the Chief Executive Councillor takes any action under sub-section (1), he shall inform the ¹ [Council] forthwith.

1. Word subst. by W.B. Act 3 of 1994.

46. Execution of work, etc. in cases of emergency :-

If the Chief Executive Councillor is satisfied that an emergency has arisen and is of the opinion that the immediate execution of any work or the doing of any act, which ordinarily requires the approval of the General Council ¹[or the Council,] is necessary for the maintenance of services or the safety of the public or the prevention of extensive damage to any property of the General Council, he may direct the execution of such work or the doing of such act without such approval and, in such cases, he may direct that the expenses for such execution or doing shall be paid from the Council Fund :

Provided that the ²[Chief Executive Councillor] shall report forthwith to the General Council or to the ³ [Council], as the case may be, the action taken under this section and the reasons therefor.

1. Words subst. by W.B. Act 3 of 1994.
2. Words subst. by W.B. Act 3 of 1994.
3. Word subst. by W.B. Act 3 of 1994.

47. Committees :-

¹ The Chief Executive Councillor may, from time to time, appoint such committees constituting of members from amongst the Councillors as may be required for the efficient discharge of the functions of the General Council.

1. Sec. 47 subst. by W.B. Act 3 of 1994.

48. [Principal Secretary to Council.] :-

12

(1) There shall be a Principal Secretary to the Council (hereinafter referred to as the Principal Secretary) appointed by the Government in consultation with the Chief Executive Councillor.

²(2) The Principal Secretary shall be paid out of the Council Fund such salaries and allowances as may, from time to time, be fixed by the Government.

(3) The ⁴[Principal Secretary] shall be the Principal Executive Officer of the General Council and all other officers of the General Council shall be subordinate to him. He shall have the right to be present at a meeting of the General Council or of the ⁵[Council] or of any Committee of the General Council, and to take part in the discussions as if he were a member of the General Council or of the ⁴[Council] or of the Committee as aforesaid and may, with the consent of the Chief Executive Councillor or any other person presiding over such meeting for the time being, as the case may be, at any time make a statement, or give an explanation, of facts, but he shall not be entitled to vote.

²(4)

(a) The Principal Secretary shall act under the direction of the Chief Executive Councillor.

(b) The Principal Secretary shall be responsible for the maintenance of the records of the Council.

(5) The General Council may, upon a resolution carried at a special meeting called for the purpose and supported by a majority of the total number of ⁴[Councillors] holding office for the time being, request the Government for replacement of the ³[Principal Secretary] appointed under ¹⁰[sub-section (1)] and the Government may, on being satisfied as to the necessity of such replacement, replace the ¹¹[Principal Secretary] : ¹² Provided that the Government may, at any time, withdraw the Principal Secretary appointed under sub-section (1).

1. Words subst. by W.B. Act 3 of 1994.

2. Sub-sees. (1). (2) and (4) subst. by W.B. Act 3 of 1994.

4. Words subst. by W.B. Act 3 of 1994.
5. Word subst. by W.B. Act 3 of 1994.
10. Word, figure and brackets subst. by W.B. Act 3 of 1994
11. Words subst. by W.B. Act 3 of 1994.
12. Proviso subst. by W.B. Act 3 of 1994.

49. Appointment of Secretary :-

¹ The Government may place at the disposal of the Council the services of such officers of the Government for appointment as Secretary to the Council as the Government may think fit.

1. Sec. 49 subst. by W.B. Act 3 of 1994.

50. Deputation of other officers :-

The Government may, in consultation with the Chief Executive Councillor, depute such other officers and experts as may be required to assist the ¹ [Council] on such terms and conditions as the Government may determine.

1. Word subst. by W.B. Act 3 of 1994.

51. Officers and other employees :-

1

(1) The ²[Council may], with the approval of the Government, appoint such officers and other employees as may be necessary for the due discharge of its functions and may, with the approval of the Government, make regulations relating to their conditions of service :

Provided that the terms and conditions of service of an employee of the Government transferred to the ³[Council] shall not be varied to his disadvantage :

⁴Provided further that where any disciplinary or other action is required to be taken against any such employee, the Council shall have, the power to initiate such disciplinary or other action against such employee whereupon the Council shall report the same forthwith to the Government for such further action as the Government may think fit.

⁵ (2) Notwithstanding anything contained in sub-section (1), the Council may, without the approval of the Government, make appointment of persons to such categories of sanctioned posts as are equivalent to Group "C" and Group "D" posts under the Government after making regulations relating to the conditions of service of such persons with the approval of the Government.

1. Sec. 51 was renumbered as sub-sec. (1) of that sec. by W.B. Act 3 of 1994.
2. Words subst. by W.B. Act 3 of 1994.
3. Word subst. by W.B. Act 3 of 1994.
4. Proviso subst. by W.B. Act 3 of 1994.
5. Sub-sec. (2) inst. by W.B. Act 3 of 1994.

CHAPTER 5

Funds and Audit

52. Council Fund :-

(1) There shall be a fund to be called the Council Fund to be held by the General Council in trust for the purpose of this Act and all moneys realised or realisable under this Act and all moneys otherwise received by the General Council shall be credited thereto.

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

(3) The General Council may, subject to the provisions of any law relating to the raising of loans by local authorities, 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.

(4) The moneys credited to the Council Fund shall be applied for payment of all sums, charges and costs necessary for carrying out the purposes of this Act.

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

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

Provided further that such expenditure shall be reported to the General Council 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.

(6) Surplus moneys standing at the credit of the General Council shall be invested in accordance with such rules as may be made by the Government in this behalf.

(7) The Government may make rules for the management of the Council Fund and for the procedure to be followed in respect of payment of moneys into the said Fund, withdrawal of moneys therefrom, the custody of moneys therein and any other matter incidental thereto or connected therewith.

(8) The accounts of the General Council shall be kept in such form as may be prescribed in consultation with the Accountant-General.

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

53. Licences or cases for the purpose of prospecting for or extraction of minerals :-

Such share of royalties accruing each year from forest, fees for grant of licence or lease for the purpose of prospecting for, or extraction of, minerals granted by the Government and land revenue in respect of hill areas as may be agreed upon between the Government and the General Council shall be made over to the General Council.

54. Budget :-

(1) The General Council shall, at such time and in such manner as may be prescribed, 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 the 1st November of the current financial year.

(2) The Government may, within such time as may be prescribed, either approve the budget or return it to the General Council for such modifications as it may direct. On such modifications being made the budget shall be re-submitted within such time as may be prescribed for approval of the Government. If the approval of the Government is not received by the General Council by the last date of the financial year, the budget shall be deemed to have been

approved by the Government.

(3) No expenditure shall be incurred unless the budget is approved by the Government.

55. Supplementary Budget :-

The General Council may prepare in each financial year a supplementary estimate providing for any modification of its budget for that year and may submit it to the Government for approval.

CHAPTER 6

Miscellaneous

56. Inspection of accounts etc :-

¹ Notwithstanding anything contained elsewhere in this Act, the Government may,

(a) if it is of opinion that it is necessary or expedient so to do, cause an inspection to be made of the accounts of the Council from time to time and may, for the conduct of such inspection, appoint in consultation with the Council such officer or officers as the Government may think fit, and

(b) advise the Council on the accounts of the Council.

1. Sec. 56 subst. by W.B. Act 3 of 1994.

57. Transfer of institution :-

(1) The Government may transfer any institution under its management or control to the General Council, subject to such conditions, limitations and restrictions as may be agreed upon.

(2) When an institution is transferred under sub-section (1), all persons employed in the institution shall, with effect from the date of such transfer, ¹ [be deemed to be on deputation to the Council] and the terms and conditions of service of such persons shall not be less advantageous than what they were entitled to immediately before such transfer.

1. Words subst. by W.B. Act 3 of 1994.

58. Annulment or suspension of acts and resolutions :-

If, at any time, the Government is satisfied that a regulation or by-law or resolution made by the General Council or the ¹ [Council] is likely to endanger the safety or security of the State, the Government may annul or suspend such regulation or by-law or resolution, as the case may be, and take such steps as it may

consider necessary to prevent the enforcement or operation or continuance of such regulation or by-law or the giving effect to such resolution.

1. Word subst. by W.B. Act 3 of 1994.

59. Power of State Planning Board :-

The State Planning Board shall have power to supervise and evaluate the works of the General Council.

60. Power to issue directions :-

In the discharge of its functions, the General Council shall be guided by such instructions or directions as may be given to it by the Government from time to time for the proper implementation of the objects of this Act.

61. Dissolution :-

(1) If, in the opinion of the Government, the General Council

(i) has shown its incompetence to perform, or has made default in the performance of, the duties imposed on it by or under this Act or any other law for the time being in force, or

(ii) has exceeded or abused its power,

(2) The Government shall, before making any order under subsection (1), give to the General Council a notice containing the charges and an opportunity of making representation to the Government in respect of the same.

62. Effect of supersession :-

When an order of supersession has been passed under section 61, with effect from the date of the order, (a) all the ¹[Councillors] shall vacate their office; and (b) all the powers, duties and functions of the General Council and the ¹ [Council] shall be exercised, discharged and performed by such authority or authorities or such person or persons as may be appointed by the Government in this behalf.

1. Word subst. by W.B. Act 3 of 1994.

63. Application of Acts of the Legislature of the State :-

If any provision of any regulation or by-law made by the General Council is repugnant to any provision of a law made by the Legislature of the State of West Bengal with respect to that matter, then, the regulation or the by-law so made, whether made before

or after the law made by the Legislature of the State of West Bengal, shall, to the extent of the repugnancy, be void and the law made by the Legislature of the State of West Bengal shall prevail.

64. Power of Government to make rules :-

(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 rule made under this section or under section 19 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 session immediately following the session or the successive sessions aforesaid, the State Legislature agrees 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; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

65. Executive Councillors, officers and employees to be public servants :-

¹² [The Chief Executive Councillor and the Vice-Chairman, who are the members of the Council, and the other Executive Councillors] and the officers and other employees of the General Council shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

1. Words subst. by W.B. Act 3 of 1994.

2. Words subst. by W.B. Act 3 of 1994.

66. Validation :-

No act or proceeding of the General Council shall be deemed to be invalid merely by reason of existence of any vacancy in the General Council or any defect or irregularity in the constitution thereof.

67. Indemnity :-

No suit or other legal proceeding shall lie against the General Council ¹ [or against any Councillor or against any officer or employee of the General Council] for anything in good faith done or intended to be done in pursuance of this Act or of any rules or regulations made thereunder.

1. Words subst. by W.B. Act 3 of 1994.

68. Interpretation :-

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

69. Removal of difficulties :-

If any difficulty arises in giving effect to the provisions 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: Provided that no such order shall be made after the expiry of a period of two years from the date of publication of this Act in the Official Gazette.

70. Saving :-

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

Explanation. For the purposes of this section, "law" shall include any enactment, ordinance, regulation, order, by-law, rule, scheme, notification or other instrument having the force of law.

71. Repeal :-

1 The Darjeeling Hill Areas Development Council Act, 1976, is hereby repealed.

1. This 'Schedule' was first inst. by W.B. Act 5 of 1989. Finally, the words in the heading subst. by W.B. Act 3 of 1994.

SCHEDULE 1

Form of Oath or Affirmation

SCHEDULE 1

(See section 21.)

Form of Oath or Affirmation

[Section 21 of the Darjeeling Gorkha Hill Council Act, 1988
(West Bengal Act 13 of 1988)]

I, A.B., having been elected (or nominated) a [Councillor] of the Darjeeling Gorkha Hill Council, do swear in the name of God/ solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India.

(Signature and name of the [Councillor] in block letters)

Sworn in the name of God/solemnly affirmed by Shri/Shrimati ., at.. (place) at.
(hour) on this the.. day of.., before me.

(Signature)
(Name, designation and seal)

Certificate of receipt of form of oath or affirmation

Certified that (name), who has been elected
to the Darjeeling Gorkha Hill Council from Constituency/ nominated to the
Darjeeling Gorkha Hill Council, has made and subscribed the oath/affirmation as
required by section 21 of the Darjeeling Gorkha Hill Council Act, 1988 (West
Bengal Act 13 of 1988), before me at my office at. (hour) on the (date).

(Signature)
(Name, designation and seal).

SCHEDULE 2

Form of Oath or Affirmation

SCHEDULE 2

[See section 34(7).]

Form of Oath or Affirmation

[Sub-section (7) of section 34 of the Darjeeling Gorkha Hill Council
Act, 1988 (West Bengal Act 13 of 1988)]

I, A.B . having been elected Chief Executive Councillor of the Darjeeling Gorkha
Hill Council, do swear in the name of God/solemnly affirm that I will bear true
faith and allegiance to the Constitution of India as by law established and that I
will uphold the sovereignty and integrity of India.

.
(Signature and name of the
Chief Executive Councillor
in block letters)

Sworn in the name of God/solemnly affirmed by Shri/Shrimati.. at. (place) at.
(hour) on this the.. day of.., before me.

.
(Signature)
Governor of West Bengal.

Certificate of receipt of form of oath or affirmation

Certified that.. (name), who has been elected Chief Executive Councillor of the
Darjeeling Gorkha Hill Council, has made and subscribed the oath / affirmation as
required by section 34 of the Darjeeling Gorkha Hill Council Act, 1988 (West
Bengal Act 13 of 1988), before the Governor at. (hour) on the.. (date).

.
(Signature)
Secretary to the Governor of
West Bengal

