

GAHC010000092025



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/20/2025

SURAJ NAIDING AND 3 ORS.
S/O- LATE SUSHINDRA NAIDING,
R/O- VILL.- DIBARAI, P.O. HAFLONG,
PIN- 788819, DIST. DIMA HASAO, ASSAM

2: BIMONTA THAOSEN
S/O- LATE THANGSHING THAOSEN
R/O- VILL.- TOPODISA
P.S. HAFLONG
P.O. SARKARI BAGAN
PIN- 788820
DIST. DIMA HASAO
ASSAM

3: DHIRONJOY NAIDING
S/O- SRI CHATRINON NAIDING
R/O- COLLEGE ROAD
DIMA HASAO
P.S. HAFLONG
PIN- 788819
DIST. DIMA HASAO
ASSAM

4: AMON THAOSEN
S/O- LATE DAJALA THAOSEN
R/O- MANDERDISA
VILL.- LANGTING
PIN- 788832
DIST. DIMA HASAO
ASSAM

VERSUS

THE N. C. HILLS AUTONOMOUS COUNCIL AND 5 ORS
REPRESENTED BY ITS PRINCIPAL SECRETARY (N) HAFLONG,
DIST. DIMA HASAO, ASSAM

2:THE STATE OF ASSAM
REPRESENTED BY THE CHIEF SECRETARY
GOVERNMENT OF ASSAM
BLOCK-C
3RD FLOOR
ASSAM SACHIVALAYA
DISPUR
GUWAHATI-781006.

3:THE HONBLE GOVERNOR
STATE OF ASSAM THROUGH HIS SECRETARY
RAJ BHAWAN
KHARGULI HILLS
UZAN BAZAR
GHY-781001.

4:THE CHAIRMAN
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG
DIST. DIMA HASAO
ASSAM

5:THE CHIEF EXECUTIVE MEMBER
N.C. HILLS AUTONOMOUS COUNCIL
HAFLONG
DIST. DIMA HASAO
ASSAM

6:THE COMMISSIONER AND SECRETARY
HILLS AREA DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR-6
GUWAHATI
ASSAM

For the petitioners : Mr. B.D. Das, Senior Advocate
Assisted by Mrs. R. Deka, Advocate

For the respondents : Mr. D. Thaosen, S.C., N.C.H.A.C. for
Respondent Nos.1, 4 and 5
Mr. D.K. Sarmah,
Addl. Sr. Govt. Advocate, Assam for
Respondent Nos.2, 3 and 6

– B E F O R E –

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

21-04-2026

(Ashutosh Kumar, C.J.)

The core challenge in the present petition is to the validity of the 42nd Amendment Act and incorporation of Rule 18(A) in particular, by the N.C. Hills Autonomous Council, allowing disqualification of elected Council members in case of defection from their political parties, which the petitioners allege is beyond the constitutional mandate of the Council.

The 42nd Amendment Act and Rule 18(A), the petitioners urge, is a replica of anti-defection law in the Tenth Schedule which is applicable to the Members of Parliament and State Assemblies. The Council does not have any legal power under the Sixth Schedule to make such a law. Hence, the prayer for declaring it *ultra vires* or non-est.

The Sixth Schedule of the Constitution was created to give tribal areas in Assam and a few other States a special form of self-governance through Autonomous District Councils. The N.C. Hills Autonomous Council was first created in the year 1952. Later, some extra law-making powers were given to the Council through constitutional amendments carried out sometimes in 1995 and 2003. However, these powers allow the Council to make law only on a limited list of local subjects: namely, primary and secondary education; health; agriculture; roads; markets; fisheries; minor irrigation etc. Nowhere in the Sixth Schedule of the Constitution of India is there any provision giving the power to the Council to legislate a law regarding disqualification of its own elected members on the ground of defection from their political parties. This power has specifically been given only to Parliament and State Legislature through the Tenth Schedule.

Mr. B.D. Das, learned Senior Advocate for the petitioners has submitted that the other two Councils in the State of Assam, namely, Karbi Anglong Autonomous Council and Bodoland Territorial Council have not come up with any such anti-defection law.

Notwithstanding the approval of His Excellency, the Governor of Assam, the impugned legislation, it has been argued, cannot be sustained.

There is yet another aspect of the matter which has been highlighted by Mr. Das, learned Senior Advocate that in the year 2019, the Central Government had introduced the Constitution (125th Amendment) Bill in the Rajya Sabha to add this power in the Sixth

Schedule, which Bill is still pending consideration of the House.

For bringing in such a law, the Constitution, Mr. Das, learned Senior Advocate asserts, would be required to be amended.

However, an adjournment has been sought today by the counsel for the N.C. Hills Autonomous Council on the ground of unavailability of the learned Advocate General, Assam who is to address this Court on the issue.

Let this matter come up for consideration on **07.05.2026**.

JUDGE

CHIEF JUSTICE

Comparing Assistant