

GAHC010000092025



2026:GAU-AS:6380-DB

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

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

1.SURAJ NAIDING ,  
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.

**.....Petitioners**

**- VERSUS -**

1.THE N. C. HILLS AUTONOMOUS COUNCIL,  
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.

.....Respondents

**- B E F O R E -**

**HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR**

**HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY**

For the Petitioner(s) : Mr. B.D. Das, Senior Advocate assisted by Ms. R. Deka and Mr. H.K. Sarma, Advocates.

For the Respondent(s) : Mr. D. Saikia, Advocate General, Assam assisted by Ms. P. Barua, Advocate.

: Mr. D. Thaosen, Standing Counsel, North Cachar Hills Autonomous Council.

Date of hearing : 07.05.2026.

Date of judgment : **07.05.2026.**

**JUDGMENT & ORDER (ORAL)**

**(Ashutosh Kumar, CJ)**

We have heard Mr. B.D. Das, learned Senior Advocate for the petitioners and Mr. D. Saikia, learned Advocate General, Assam for the respondents.

**2.** In the present writ petition, the constitutional validity of the “constitution of N.C. Hills Autonomous Council (42<sup>nd</sup> Amendment) Act, 2017” (hereinafter referred to as “42<sup>nd</sup> Amendment Act of 2017”), whereby a new Rule, namely, 18A has been inserted in the principal rules, providing for disqualification of the elected members of the Council on the ground of defection from their political parties, has been questioned.

The challenge raises substantial questions concerning the distribution of legislative power under the Constitution and the scope of autonomy under the Sixth Schedule of the Constitution.

**3.** The newly inserted Rule provides that a Member of the Council belonging to any political party shall be disqualified for being a Member of the Council if he voluntarily gives up his membership of such political party; or if he votes or abstains from voting in the Council contrary to any direction or whip issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

An explanation has been provided that for the purposes of the afore-noted sub-rule, a nominated member of the Council shall (i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party; (ii) in any other case, he be deemed to belong to the political party of which he

becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after taking oath under Rule 24 of the Rules.

An elected member of the Council shall (i) be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member; (ii) be disqualified for being a member of the Council if he joins any other political party after such election.

An elected member of the Council, who has been elected as an independent candidate or other than a candidate set up by a political party, may opt to become a member of any political party. However, such member shall be disqualified for being a member of the Council if after becoming a member of any political party, he joins in any other political party.

A nominated member of the Council shall be disqualified for being a member of the Council if he joins any political party after the expiry of six months from the date on which he takes his seat after taking oath under Rule 24 of the Rules.

Notwithstanding anything contained in the forgoing provisions of this sub-rule, a person, who, on the date of commencement of the Constitution of N.C. Hills Autonomous Council (42<sup>nd</sup> Amendment) Act, 2017, is a member of the Council (whether elected or nominated as such) shall (i) where he was a member of a political party immediately before such commencement, be deemed, for the purposes of clause (a)

of this sub-rule, to have been elected as a member of the Council as a candidate set up by such political party; (ii) in any other case, he be deemed to be an elected member of the Council who has been elected as such otherwise than as a candidate set up by any political party for the purposes of clause (c) of this sub-rule, or, as the case may be, be deemed to be a nominated member of the Council for the purposes of clause (d) of this sub-rule.

Disqualification on the ground of defection would not apply in case of merger. Exceptions also have been provided, namely, that a person, who has been elected to the office of the Chairman or Deputy Chairman of the Council, shall not be disqualified under this Rule if he (a) by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoins that political party or becomes a member of another political party; or if (b) he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

**4.** Any question arising as to whether a member of the Council has become subject to disqualification under the Rule, that shall be referred for the decision of the Chairman of the Council and his decision shall be final.

If a question arises as to whether the Chairman or the Deputy Chairman has become subject to such disqualification, that shall be

referred for the decision of such member of the Council as the Council may elect in this behalf and his decision shall be final.

Any appeal by any member against such decision of the Chairman and an appeal by the Chairman against the decision of such member elected for the purposes, as the case may be, shall lie before the Governor and his decision shall be final.

The jurisdiction of the courts to evaluate such decision has been barred by providing that no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of the Council under this Rule.

**5.** Under the 42<sup>nd</sup> Amendment Act, 2017, referred to above, there has also been a substitution of Rule 20 and amendments in Rules 21, 107 and 176.

**6.** The contention of the petitioners is that this amendment is a replica of the provisions of the Tenth Schedule of the Constitution of India on which the Council had no jurisdiction to legislate.

The Sixth Schedule is a unique constitutional amendment, designed to provide autonomy to tribal areas in the North East, including regions within the State of Assam. The object was to preserve tribal identity and customs to grant self-governance in specified local matters and to balance autonomy with the sovereignty of the State. The Autonomous District Councils are but not sovereign legislatures. They are constitutional bodies with limited and enumerated powers.

**7.** The petitioners are the permanent residents of Dima Hasao district/ N.C. Hills Autonomous Council. It may be stated here that the N.C. Hills Autonomous Council was first created in the year 1952 under the provisions of paragraph 2 of the Sixth Schedule of the Constitution of India and subsequently by an amendment of the Sixth Schedule of the Constitution (Amendment Act) 2003, it has been re-named as N.C. Hills Autonomous Council (hereinafter referred to as 'Council'). There are two other similar Autonomous Councils in the State of Assam, which have been constituted under the provisions of the Sixth Schedule, namely, Karbi Anglong Autonomous Council and Bodoland Territorial Council.

As per paragraph 2 of the Sixth Schedule of the Constitution of India, today there are 28 elected members of N.C. Hills Autonomous Council on the basis of adult suffrage and two members are nominated by the Governor.

**8.** Paragraph 2(6) of the Sixth Schedule of the Constitution provides that the Governor shall make rules for the first constitution of the District Councils and Regional Councils in consultation with the existing tribal Councils or other representatives of the tribal organizations within the autonomous districts or regions concerned, and such rules shall provide for : (a) the composition of the District Councils and Regional Councils and the allocation of seats therein; (b) the delimitation of territorial constituencies for the purposes of elections to those Councils; (c) the qualifications for voting at such elections and the preparation of electoral rolls therefor; (d) the qualifications for being elected at such elections as members of such Councils; (e) the term of office of members

of Regional Councils; (f) any other matter relating to or connected with elections or nominations to such Councils; (g) the procedure and the conduct of business, including the power to act notwithstanding any vacancy in the District and Regional Councils; and (h) the appointment of officers and staff of the District and Regional Councils.

**9.** Paragraph 3 of the Sixth Schedule provides the power of the Council to make laws with respect to (a) land; (b) the management of any forest not being a reserved forest; (c) the use of any canal or water-course for the purpose of agriculture; (d) the regulation of the practice of *jhum* or other forms of shifting cultivation; (e) the establishment of village or town committees or councils and their powers; (f) any other matter relating to village or town administration, including village or town police and public health and sanitation; (g) the appointment or succession of Chiefs or Headmen; (h) the inheritance of property; (i) marriage and divorce; and (j) social customs.

Any law made under this provision shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

Under paragraph 3 A of the Sixth Schedule which was brought about w.e.f. 12.09.1995, additional powers of the N.C. Hills Autonomous Council and Karbi Anglong Autonomous Council have been given to make laws on aspects like industries; communications; preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice; cattle pounds; primary and secondary education; agriculture; fisheries; water; social security and social insurance; employment and unemployment; flood control schemes;

theatrical and dramatic performances; public health and sanitation; hospitals and dispensaries; minor irrigation; trade and commerce in, and the production, supply and distribution of food stuffs, cattle fodder, raw cotton and raw jute; libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments; and alienation of land, etc.

**10.** The contention of the petitioners is that beyond these subjects, there is no provision in the Sixth Schedule of the Constitution of India empowering the N.C. Hills Autonomous Council or for that matter any other Council for making laws as regards the disqualification of any member of the Council and reducing their tenure like that in the Tenth Schedule of the Constitution of India. This anti-defection subject does not fall within any entry under the Sixth Schedule but lies within the constitutional domain governed by the Tenth Schedule.

**11.** On this score alone, it has been submitted that the 42<sup>nd</sup> Amendment Act of 2017 is *ultra vires* the Constitution for the absence of any power of the Council to regulate defection.

**12.** It was also brought to the notice of this Court that the Constitution (125<sup>th</sup> Amendment) Bill of 2019, proposing for amendment of sub-paragraph (6) of paragraph 2 of the Sixth Schedule of the Constitution and providing power of disqualification of members of the Council on the ground of defection, was introduced in the Rajya Sabha, which is still pending the scrutiny of the Houses of the Parliament.

**13.** The other two Autonomous Councils in the State of Assam,

namely, Karbi Anglong Autonomous Council (KAAC) and Bodoland Territorial Council (BTC) have not made any law regarding disqualification of any member like the one which is under challenge in the present case.

**14.** By enacting such law by way of amendment, the Council has encroached upon the field where only the Union Legislature could have made the law.

**15.** For the sake of some clarity about the law relating to defection, the Tenth Schedule is also required to be seen. For long, the evils of political defections had been a matter of national concern. The Government of the day was of the view that if such menace was not combated, it was likely to undermine the very foundations of democracy and principles which sustain those. With such an object, an Anti-Defection Bill was introduced in the Parliament, meant for outlawing defection. However, twice such Bills had lapsed. But ultimately, by virtue of the Constitution (52<sup>nd</sup> Amendment) Act, 1985, the Tenth Schedule was inserted in the Constitution of India. Its validity was upheld and all objections regarding the same being destructive of the basic structures of the Constitution and violative of the fundamental principles of parliamentary democracy, were overruled.

**16.** There cannot be any cavil that defections flout people's mandate. It is a malady which ought to be curbed. A constitutional democracy can work only under inbuilt safeguards; but to make a law with respect to defection, the Council ought to have the jurisdiction to frame law on the afore-noted subject.

**17.** The questions, therefore, which confront us is (i) whether the N.C. Hills Autonomous Council has the legislative competence under the Sixth Schedule of the Constitution to frame law in this regard; (ii) whether the impugned law can be sustained applying the law of pith and substance; and (iii) whether the law is inconsistent with the constitutional scheme, particularly the Tenth Schedule.

**18.** Paragraph 2(6) of the Sixth Schedule empowers the Governor of the State to make rule for the first constitution of the District Councils and the Regional Councils on the subjects which have been noticed above, including the qualifications for voting, the qualifications for being elected and any other matter relating to and connected with the elections and nominations to such Councils etc.

**19.** Paragraph 2(7) of the Sixth Schedule thereafter provides that the District and the Regional Councils may, after its first constitution, make rules with the approval of the Governor with regard to the matters specified in sub-paragraph 6, referred to above, and may also make rules, with likewise approval of the Governor, regulating (a) the formation of Subordinate Local Councils or Boards; (b) the procedure and their conduct of business and (c) generally, all matters relating to the transactions of business pertaining to the administration of the District or the regions, as the case may be.

(Emphasis provided)

**20.** The subjects on which the District Councils or the Regional Councils could make laws, as noted above, have already been provided

in paragraph 3 of the Sixth Schedule.

**21.** The contention on behalf of the State of Assam, as it appears from its affidavit, defending the Anti-Defection Law, is that under paragraph 2(7), the Council can make laws, subject to the approval of the Governor, on subjects enumerated in paragraph 2(6) and, therefore, if one of the subjects enumerated in paragraph 2(6) is qualification for being elected and the term of office of the members, it would also, in pith and substance, be for disqualification, which aspect inheres in the subject matter of qualification, over which law could be made.

**22.** Based on such ground, it has been asserted on behalf of the State of Assam that by virtue of the power granted to the Council under paragraph 2(7), apart from paragraph 3, an Anti-Defection law could be made and based on that source of power, the N.C. Hills Autonomous Council had forwarded the 42<sup>nd</sup> Amendment Bill, 2017 to the Hon'ble Governor of Assam who consented and approved the same.

**23.** This argument, in the first blush, appears to be attractive but it has to be understood in its correct perspective.

**24.** It is a settled principle that Parliament and the State legislatures under the Constitution enjoy sovereign legislative authority, within the assigned fields, subject only to constitutional limitations. Parliament and the State legislature's powers are wide and residuary unless specifically restrictive.

The Autonomous District Councils however are the creations of

the Constitution with limited and enumerated powers. Their legislative competence is confined to specified subjects, without any express or implied power enabling them to make laws on a topic which has not been specifically enumerated. It cannot be inferred that if a law could be made with respect to qualifications for being elected, it would also provide room for the Council to make law for disqualification on grounds of anti-defection by resorting to the doctrine of pith and substance. Their powers cannot extend to residuary matters and must be construed narrowly.

**25.** The doctrine of pith and substance is invoked to determine the true nature and character of legislation. In cases, incidental encroachment may be permissible if the law substantially falls within the legislative field.

**26.** Another aspect which needs to be noted is that the Constitution of India has consciously centralized the disqualification law. The Tenth Schedule inserted by the Constitution (52<sup>nd</sup> Amendment) Act, 1985 provides a complete Code for anti-defection. It is a self-contained constitutional mechanism, which is not open to parallel legislation by subordinate bodies.

**27.** Paragraph 21 of the Sixth Schedule deals with the amendment of the Schedule which reads as here under:

***“21. Amendment of the Schedule. -(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule***

*as so amended.*

*(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.”*

**28.** In this way, if the tenure of the elected members of the Council is sought to be curtailed by disqualification, it can be done only by the Parliament by amending the provisions of paragraph 2(6A) by taking recourse to paragraph 21.

**29.** The argument in defence of the validity of the 42<sup>nd</sup> Amendment Act of 2017, brought about by the N.C. Hills Autonomous Council that any law regulating defection is merely incidental or an ancillary power to regulate its internal functioning for the purpose of maintenance of the establishment and governance, is not readily acceptable.

**30.** The pitfall in this argument is that disqualification for defection cannot be said to be merely procedural; rather, as already noted above, it is a substantive constitutional matter and cannot be treated as incidental. This subject does not fall within any entry under the Sixth Schedule and does not lie within the constitutional domain governed by the Tenth Schedule.

**31.** In our estimation, there is a stronger reason against the validity of the law in question, because Sixth Schedule does not confer the competence to legislature on electoral disqualification of this nature. The field is already occupied by the constitutional provisions under the Tenth

Schedule. Competence cannot be presumed beyond express provisions.

**32.** The introduction of the Bill in the Rajya Sabha for bringing Anti-Defection law in Autonomous Councils also has yet not passed the scrutiny of the Houses.

**33.** On the afore-noted grounds, we do not find any plenary power of the Council to legislate on disqualification for defection from a political party.

**34.** Only the Parliament and the State Legislatures enjoy the plenary power of legislation.

**35.** No doubt, it is settled that validity of an Act would not be affected if it only incidentally transgresses on matters outside the authorized fields. If a law so made by a competent legislature substantially falls within the powers expressly conferred upon such legislature, which had enacted it, then it cannot be held to be invalid merely because of incidental encroachment on matters which have been assigned to another legislature. But the Autonomous Councils under the Sixth Schedule of the Constitution of India do not have such plenary power of legislation like the Parliament and the State Legislature.

The power of legislation conferred on the Autonomous Councils has to be confined strictly within the limits prescribed by the plain language used and no doctrine of wide construction would be applicable. [Also refer to (i) ***Hispreacheringson Shylla -Vs- Khasi Hills Autonomous District Council & Ors. :: (2009) 2 GLR 500***; (ii) ***District Council of United Khasi and Jayantia Hills & Ors. etc. -Vs- Sitimon***

***Sawian etc. :: (1971) 3 SCC 708 & (iii) Sh. Onish Moy Chakma -Vs- State of Mizoram :: 2021 SCC OnLine Gau 2795.]***

**36.** We thus hold that (i) N.C. Hills Autonomous Council is not a plenary legislation and lacks competence beyond enumerated subjects; (ii) in pith and substance, Rule 18A is an anti-defection law, falling outside the Sixth Schedule; (iii) the field is occupied by the Tenth Schedule, providing a complete constitutional Code; and that Rule 18A is *ultra vires* and unconstitutional.

**37.** For the reasons stated above, Rule 18A introduced by Constitution of N.C. Hills Autonomous Council (42<sup>nd</sup> Amendment) Act, 2017 is hereby declared to be invalid and null and void, as being a legislation without any competence of the N.C. Hills Autonomous Council to make a law on the subject of defection.

**38.** Accordingly, we are left with no option but to strike down the afore-noted legislation as invalid.

**39.** This writ petition stands allowed.

**JUDGE**

**CHIEF JUSTICE**