

GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT
Legislative

West Bengal Act XX of 1996

**THE DARJEELING GORKHA HILL COUNCIL
(AMENDMENT) ACT, 1996.**

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette, Extraordinary*, of the 13th August, 1996.]

[13th August, 1996.]

An Act to amend the Darjeeling Gorkha Hill Council Act, 1988.

West Ben.
Act XIII of
1988.

WHEREAS it is expedient to amend the Darjeeling Gorkha Hill Council Act, 1988, for the purposes and in the manner hereinafter appearing;

It is hereby enacted in the Forty-seventh Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. (1) This Act may be called the Darjeeling Gorkha Hill Council (Amendment) Act, 1996.

Short title
and
commencement.

(2) It shall come into force at once.

2. After section 18 of the Darjeeling Gorkha Hill Council Act, 1988 (hereinafter referred to as the principal Act), the following section shall be inserted:—

Insertion of
new section
18A in West
Ben. Act
XIII of
1988.

Disqualification 18A. (1) Notwithstanding anything to the on change of contrary contained in this Act or in any other law for political party by Councillors. 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

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(b) he is an elected Councillor not set up by any 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.

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(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—

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- (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.

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(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.’.