

**GOVERNMENT OF WEST BENGAL
LAW DEPARTMENT**

Legislative

West Bengal Act XIII of 1988

**THE DARJEELING GORKHA HILL COUNCIL
ACT, 1988.**

[Passed by the West Bengal Legislature.]

[Assent of the President of India was first published in the *Calcutta Gazette, Extraordinary*, of the 15th October, 1988.]

[15th October, 1988.]

An Act to provide for the establishment of a 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 in the Thirty-ninth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

CHAPTER I

Preliminary.

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

Short title and commencement.

(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.

2. In this Act, unless the context otherwise requires,—

Definitions.

- (a) “constituency” means a constituency provided by an order made under section 6 for the purpose of election to the General Council;
- (b) “Council Fund” means the fund constituted under section 52;
- (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;

(Chapter I.—Preliminary.—Section 3.)

- (e) "Executive Council" means the Executive Council of the General Council constituted under section 38;
- (f) "General Council" means the Darjeeling Gorkha 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 sub-divisions 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, and
 - (13) Salbari Chhat Part II;
- (j) "member" means a member of the General Council;
- (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*.

West Ben.
Act XLI of
1973.

Ben. Act XV
of 1932.

General
Council.

3. (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.

The Darjeeling Gorkha Hill Council Act, 1988.

XIII of 1988.]

(Chapter I.—Preliminary.—Sections 4-9.)

4. 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. Incorporation of General Council.
5. (1) The General Council shall consist of forty-two members 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 nominated by the Government. Constitution and composition of General Council.
- (2) The nominated members shall include, amongst others,—
- (i) the three members of the Legislative Assembly of the State of West Bengal elected from the constituencies of Darjeeling, Kurseong and Kalimpong and the member elected to the House of the People from the Darjeeling Parliamentary constituency, and
- (ii) the Chairman of the municipalities within the hill areas.
- (3) The Government shall provide for due representation of the non-Nepali communities like Bhutias and Lepchas while nominating the remaining members.
6. (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. Delimitation of constituencies.
- (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. The Government may, from time to time, by order published in the *Official Gazette*, alter or amend any order made under section 6. Power to alter or amend delimitation.
8. A person shall not be qualified to be elected as a member of the General Council unless he is an elector as defined in clause (d) of section 2. Qualification for membership of General Council.
9. (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 on such date as may be fixed by the Government; or Disqualification of members of General Council.

(Chapter I.—Preliminary.—Section 9.)

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

1 of 1956.

- (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.

45 of 1860.
West Ben.
Act X of
1952.
43 of 1951.

(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 member, Chief Executive Councillor or Vice-Chairman thereof.

XIII of 1988.]

(Chapter I.—Preliminary.—Sections 10-13.)

10. (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 members of the General Council from that constituency.

Electoral rolls.

(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 members of the General Council.

(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.

11. (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.

Right to vote.

(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.

43 of 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 members 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.

Election of members.

13. (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 members of the General Council 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.

General Election to General Council.

(Chapter 1.—Preliminary.—Sections 14-17.)

(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 member 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.

Validation.

14. Where the members 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 members before they are so restrained or before the election is so set aside, as the case may be, shall be deemed to have been validly done or taken.

Publication of results of elections.

15. The names of all persons elected or nominated to the General Council shall be published by the Government in the *Official Gazette* and upon such publication, the General Council shall be deemed to have been duly constituted.

Vacation of seat.

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

Term of office of members.

17. (1) The elected members 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.

(2) The nominated members shall hold office for a period of five years, provided that—

- (a) a member nominated under clause (i) or clause (ii) of sub-section (2) of section 5 shall vacate the seat on his ceasing to be a member of the Legislative Assembly of the State of West Bengal or of the House of the People or on his ceasing to be the Chairman of the municipality, as the case may be, and

(Chapter I.—Preliminary.—Sections 18, 19.)

- (b) in respect of others, unless and until the Government makes fresh nominations in their places.

18. (1) The Government may, after giving an opportunity to an elected member of the General Council to show cause against the action proposed to be taken against him, by order remove him from office—

Disqualifications of members.

- (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 a member of the General Council; 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) Any member of the General Council 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.

19. 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:—

Power to make rules regulating the election of members.

- (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;
(b) the appointment of Returning Officers, Presiding Officers and Polling Officers for election;
(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;

(Chapter I.—Preliminary.—Section 20.)

- (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;
- (k) any other matter relating to election or election disputes in respect of which the Government deems it necessary to make rules under this section or in respect of which there is no provision in this Act or the provision is insufficient and, in the opinion of the Government, adequate provision is necessary.

Disputes
regarding
elections.

20. (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;

43 of 1951.

- (c) that any nomination has been improperly rejected;
- (d) that the result of the election in so far as it concerns the returned candidate has been materially affected—
 - (i) by the improper acceptance of any nomination, or
 - (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or

(Chapter I.—Preliminary.—Sections 21, 22.—Chapter II.—Powers and Functions of the General Council.—Section 23.)

- (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. Every member shall, before taking his seat, make and subscribe before such person as may be appointed by the Government in this behalf, an oath or affirmation according to the prescribed form.

Oath or affirmation by members.

22. Every member shall be entitled to receive such allowances as may be fixed by the General Council and as may be approved by the Government.

Allowances of members.

CHAPTER II

Powers and Functions of the General Council

23. (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.

Conduct of business.

(Chapter II.—Powers and Functions of the General Council.—Section 24.)

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

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

24. 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) that 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, hospitals and dispensaries; tourism;
- (vii) vocational training;
- (viii) public works—development and planning;
- (ix) construction and maintenance of all 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*;

West. Ben. Act X of 1956.

16 of 1927.

The Darjeeling Gorkha Hill Council Act, 1988.

XIII of 1988.]

(Chapter II.—Powers and Functions of the General Council.—Sections 25-29.)

- (xvii) education—primary, secondary and higher secondary;
- (xviii) works, lands and buildings vested in or in the possession of the General Council;
- (xix) small-scale and cottage industries.

25. Subject to the general policy and direction of the Government, the General Council shall— General powers.

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

26. 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, the General Council shall obtain previous approval of the Government. Power to acquire, hold and dispose of property etc. to be subject to previous approval of Government.

27. (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. Power to make by-laws.

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

28. 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. Power of Government to entrust functions.

29. 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:— Property vested in General Council.

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

(Chapter II.—Powers and Functions of the General Council.—Section 30.)

- (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.

Power to impose levy and collect taxes and fees.

30. (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

(Chapter II.—Powers and Functions of the General Council.—Sections 31-33.)

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. (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.

Exercise of powers of supervision over municipalities, *Panchayat Samitis* and *Gram Panchayats*.

(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. 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.

Inspection of works of *Panchayats*.

33. 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.

Disputes.

*(Chapter III.—Chief Executive Councillor and Committees
of the General Council.—Sections 34-36.)*

CHAPTER III

**Chief Executive Councillor and Committees of
the General Council.**

Chief
Executive
Councillor
and Vice-
Chairman.

34. The elected members of the General Council shall, in the prescribed manner, elect from amongst themselves,—

- (a) at the first meeting of the General Council after a general election,—
 - (i) one member to be the Chairman who shall also be the Chief Executive Councillor, and
 - (ii) one member to be the Vice-Chairman, and
- (b) so often as a vacancy in the office of the Chief Executive Councillor or the Vice-Chairman, as the case may be, occurs by reason of death, resignation, removal or otherwise and within one month of the occurrence of such vacancy, one member to be the Chief Executive Councillor or the Vice-Chairman, as the case may be.

Term of
office.

35. The Chief Executive Councillor or the Vice-Chairman, as the case may be,

- (a) shall cease to hold office as such forthwith if he ceases to be a member;
- (b) may, at any time, by giving notice in writing to the Chief Executive Councillor in the case of the Vice-Chairman and to the Vice-Chairman in the case of the Chief Executive Councillor, resign his office and such resignation shall take effect from such date as may be specified in the notice or, if no such date is specified, from the date of its receipt by the Chief Executive Councillor or the Vice-Chairman, as the case may be;
- (c) may be removed from office by a resolution carried by a majority of the total number of elected members 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 members.

Salaries and
allowances.

36. The Chief Executive Councillor and the Vice-Chairman 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.

*(Chapter III.—Chief Executive Councillor and Committees
of the General Council.—Section 37.)*

37. (1) The Chief Executive Councillor shall—
- (a) be responsible for the maintenance of the records of the General Council;
 - (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:

Powers,
functions
and duties.

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.

(Chapter III.—Chief Executive Councillor and Committees
of the General Council.—Sections 38-40.)

Executive
Council.

38. (1) There shall be an Executive Council consisting of the Chief Executive Councillor and the Vice-Chairman as the *ex officio* members and seven other members of the General Council of whom five shall be nominated by the Chief Executive Councillor from amongst the elected members of the General Council and two shall be nominated by the Government from amongst the nominated members of the General Council, provided that no nominated member who is in Government service shall be eligible to be nominated as a member of the Executive Council.

(2) The Chief Executive Councillor and the Vice-Chairman of the General Council shall respectively be the Chairman and the Vice-Chairman of the Executive Council.

(3) Any casual vacancy among the members of the Executive Council referred to in sub-section (1) occurring by reason of death, resignation or otherwise shall be filled by the Chief Executive Councillor in the case of an elected member and by the Government in the case of a nominated member:

Provided that no act or proceedings of the Executive Council shall be called in question or shall become invalid merely by reason of any vacancy among its members.

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

(5) The Executive Council shall be collectively responsible to the General Council.

Term of
office of
other
members of
Executive
Council.

39. A member of the Executive Council, other than the Chief Executive Councillor or the Vice-Chairman, shall hold office until—

- (a) he ceases to be a member of the General Council, or
- (b) he resigns his office in writing under his hand addressed to the Chief Executive Councillor in which case the resignation shall take effect from the date of its acceptance, or
- (c) his nomination is cancelled by the Chief Executive Councillor where he is nominated by him or by the Government where he is nominated by the Government.

Discharge of
functions.

40. (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

*(Chapter III.—Chief Executive Councillor and Committees
of the General Council.—Sections 41-46.)*

shall be authenticated by the signature of the head of the Executive Council or any other member of the Executive Council or by any officer of the Executive Council authorised in writing by the head of the Executive Council in this behalf.

41. The Executive Council shall refer to the General Council for approval the following matters, namely:—

Powers of Executive Council.

- (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.

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

General powers of Chief Executive Councillor.

(2) The Chief Executive Councillor shall, for convenient transactions of business of the Executive Council, allocate among its members such business and in such manner as he thinks fit.

43. The Chief Executive Councillor shall preside over the meetings of the General Council and the Executive Council. The Executive 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.

Meetings.

44. The quorum necessary for the transaction of business at a meeting of the Executive Council shall be five members.

Quorum.

45. (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 Executive Council, the Executive 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.

Special powers of Chief Executive Councillor.

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

46. 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

Execution of work, etc. in cases of emergency.

*(Chapter III.—Chief Executive Councillor and Committees
of the General Council.—Section 47.—Chapter IV.—
Establishment of the General Council.—Section 48.)*

of the General Council or the Executive 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 Chairman of the Executive Council shall report forthwith to the General Council or to the Executive Council, as the case may be, the action taken under this section and the reasons therefor.

Committees.

47. The General Council may, from time to time, appoint out of its own body such committees as may be required for the efficient discharge of its duties.

CHAPTER IV

Establishment of the General Council

Chief
Executive
Officer.

48. (1) There shall be a Chief Executive Officer.

(2) The Chief Executive Officer referred to in sub-section (1) shall be appointed by the Government in consultation with the Chief Executive Councillor and shall be paid out of the Council Fund such salaries and allowances as may, from time to time, be fixed by the Government. Such appointment shall ordinarily be for a period of three years.

(3) The Chief Executive Officer 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 Executive 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 Executive 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.

(4) The Chief Executive Officer shall act under the direction of the Chief Executive Councillor and shall be responsible to the General Council through the Chief Executive Councillor.

XIII of 1988.]

*(Chapter IV.—Establishment of the General Council.—
Sections 49-51.—Chapter V.—Funds and Audit.—Section 52.)*

(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 members holding office for the time being, request the Government for replacement of the Chief Executive Officer appointed under sub-section (2) and the Government may, on being satisfied as to the necessity of such replacement, replace the Chief Executive Officer:

Provided that the Government may at any time withdraw the Chief Executive Officer appointed under sub-section (2) in consultation with the Chief Executive Councillor.

49. The Government may appoint a Secretary for the General Council on such terms and conditions as the Government may determine in consultation with the Chief Executive Councillor.

Appointment
of Secretary.

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

Deputation
of other
officers.

51. The General 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:

Officers and
other
employees.

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

Provided further that where any disciplinary or other action is required to be taken against any such employee, the General Council shall make a reference to the Government for appropriate action.

CHAPTER V

Funds and Audit

52. (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.

Council
Fund.

(Chapter V.—Funds and Audit.—Section 52.)

(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.

56 of 1971.

*(Chapter V.—Funds and Audit.—Sections 53-55.—
Chapter VI.—Miscellaneous.—Sections 56, 57.)*

53. 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.

Licences or cases for the purpose of prospecting for or extraction of minerals.

54. (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.

Budget.

(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. 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.

Supplementary Budget.

CHAPTER VI

Miscellaneous

56. The Government shall appoint a Commissioner for Hill Affairs and such other officers as it may consider necessary for the purposes of this Act.

Commissioner.

57. (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.

Transfer of institution.

(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, be deemed to be employed by the General 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.

Annulment
or
suspension
of acts and
resolutions.

58. If, at any time, the Government is satisfied that a regulation or by-law or resolution made by the General Council or the Executive 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.

Power of
State
Planning
Board.

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

Power of
issue
directions.

60. 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.

Dissolution.

61. (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,

the Government may, by order to be published in the *Official Gazette* stating the reasons therefor, supersede the General Council and direct that it be re-constituted within such period not exceeding six months as may be specified in the order.

(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.

Effect of
super-
session.

62. When an order of supersession has been passed under section 61, with effect from the date of the order,—

- (a) all the members of the General Council shall vacate their office; and
- (b) all the powers, duties and functions of the General Council and the Executive 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.

The Darjeeling Gorkha Hill Council Act, 1988.

XIII of 1988.]

(Chapter VI.—Miscellaneous.—Sections 63-68.)

63. 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.

Application of Acts of the Legislature of the State.

64. (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.

Power of Government to make 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. The Chief Executive Councillor, the Vice-Chairman and the other members of the Executive Council 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.

Members, officers and employees to be public servants.

45 of 1860.

66. 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.

Validation.

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

Indemnity.

68. 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.

Interpretation.

The Darjeeling Gorkha Hill Council Act, 1988.

[West Ben. Act XIII of 1988.]

(Chapter VI.—Miscellaneous.—Sections 69-71.)

Removal of
difficulties.

69. 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*.

Saving.

70. 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.

Repeal.

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

West Ben.
Act XXVI of
1976.