Chapter XII

Membership in the District Council

Members of the District Councils are not delegates. They are the representatives of the people elected from single member constituencies. In theory, members of the District Councils need not speak or vote in accordance with the direction given to them by their constituencies. They are at liberty to use their discretion while considering any matter placed before the district council concerned. But in practice, each one of them is expected to be guided by the direction given by the political party to which he belongs.

Term of office: 1 The term of office of the members of the District Councils is five years. The five year term is reasonable because it will enable the government to hold elections for all representative institutions at one and the same time. The term of office commences from the date appointed for the first meeting of the District Council. But provision has been made for the extension of the life of the District Councils, which means also the extension of the term of the members. But such extensions shall be by means of a resolution passed by the District Council, but such extensions shall be for a period of one year at a time. A member elected to fill up any casual vacancy shall hold office for the remainder of the term of the District Council.

The extension of the life of any District Council is always necessary under exceptional circumstances. But in a democratic

1. AAD. Rules, 1951. Chapter IV of Part II.
set-up, such extension should not exceed for more than one year. But experience shows that the District Councils had taken the opportunity of this provision and extended the life of the District Councils and the term of the members beyond the period which was really necessary. The first Garo Hills District Council existed for a normal period. But the life of the second District Council was extended by two years, and the third District Council by three years. The term of the first United Khasi-Jaintia Hills District Council was extended by six months, the period which was justifiable. But there is no justification that the second District Council should be extended by a little more than four years. But the third District Council was not extended at all. So also, the life of the first Jaintia Hills District Council was extended by a period of one year.

Qualifications and disqualifications: The Assam Autonomous District Councils Rules framed under the provision of the Sixth Schedule does not prescribe a comprehensive details about the qualifications and dis-qualifications of the members of the District Councils. There are only three qualifications. One must be a citizen of India. He must not be less than twenty-five years of age, and is a voter for the election of members of the District Council of the Autonomous District.

The disqualifications are, first, no person shall be a member of two or more district councils. If he is elected to two district councils he must resign one of them on or before the prescribed date. So far, there has been no case of any person in Meghalaya who has ever contested for two or more district councils, leave aside the question of being elected. Secondly, he should not be elected by more than one constituency in the same autonomous district, if he is so elected from two or more constituencies.
he must stick only to one constituency and must resign from the rest on or before the prescribed date. Thirdly, if a member is absent continuously from the session for a period of thirty days, he forfeits his seat in the District Council. Fourthly, government servants whether State or Central, employees of the district or regional District Council, lunatics, uncertified bankrupts, undischarged insolvents, persons convicted by criminal court involving punishment of two years imprisonment and above, persons who resorted to corrupt practices in the previous election, government servants or employees of the District or Regional Councils who were dismissed for corruption and disloyalty to the State are debarred from the membership of the District Councils. Lastly, persons who are not citizens of India or citizens of India who have acquired the citizenship of a foreign country or owe allegiance to a foreign State are excluded from the membership of the District Councils.

**Double Membership:** The Sixth Schedule and the Rules framed thereunder prescribe that no person shall be a member of two district councils. Therefore it stands to reason that a member of the District Council should not be a member of the State Legislature or of Parliament. But, at different periods of time many prominent leaders had held double membership both in the District Council and the State Legislature. To name only a few of them, Capt. W.A. Sangma, Emerson Momin, EmonSing Sangma, Bronson Momin and Mody K. Marak from the Garo Hills had held double membership. In the Khasi Hills, J.J.M. Nichols-Roy, B.M. Roy, S.D.D. Nichols Roy, B.B. Lyngdoh, Hoover Hynniewta, Hopingstone Lyngdoh had held double membership. Till today, Edwingson Bareh and B.B. Shallam from Jaintia Hills are still holding double membership. So also, Kistobil Bymbai, John Deng Pohrmen, Ohiwot Khonglah and Beryl Sutnga had held double
membership at different times in the past.

At first, the Igal opinion was that an Executive Member of the District Council should not be a member of the State Legislature or of Parliament. Therefore one and the same person should not be a member of the District Council as well as of the State Legislature or Parliament. The State Government was not competent to remove this disqualification. But in order to enable some members of the Autonomous District Councils who were also elected to the State Legislature to continue both as members of the District Council and as members of the State Legislature, the Assam Legislative Assembly passed a legislation to this effect, though from the strict constitutional point of view, it is doubtful whether it was competent to do so.

Capt. W.A. Sangma was doubtful about the legality of the said legislation. Since the party desired that Capt. Sangma and other top leaders of the party should be elected both to the District Councils as well as to the State Legislature, Capt. W.A. Sangma wrote to the Home Minister, Government of India, requesting him to remove the disqualifications imposed by section 7(e) of the Representation of People's Act. Hence, the People's Representation Act was amended in 1956. Capt. Sangma and his party colleagues thought that the C.E.Ms. and the E.Ms. should be members of the State legislature so that a better understanding between the State Government and the District Councils might be promoted. The C.E.Ms. and the E.Ms. would be in a better position to place the various problems faced by the District Councils on the floor of the State Assembly. Accordingly, the Representation of Peoples (Amendment) Act, 1956 was passed by Parliament. Thus according to clause 3 of this Act, an elected member of the Autonomous District Council as...
As the members of the Executive Committee of the District Councils can contest the election either to the State Legislature or to either House of Parliament.

A question may be asked - Is it desirable to allow one and the same person to have double membership? A second look at the system reveals certain emerging objections. First, it is not desirable that such persons should have the privilege of drawing salary and allowances from two representative institutions. Secondly, if a member of a particular District Council is also a member of the State legislature and if he belongs to the ruling party, he would try to control the administration of the District Council. If he happens to be a member of the State Cabinet, his control would be greater. If he holds the portfolio of District Council Affairs Department, his control would be complete. Thirdly, if a member of the State Legislature is also the C.E.H. or even the E.K. of the District Council, he might abuse the powers vested in him. This is more true, because, for various political reasons the Government would not like to interfere with his administration of the district council. Fourthly, double membership is not allowed in the case of Parliament and the State Legislature. Therefore, there is no justification that double membership be allowed in the case of members of the District Councils. Fifthly, in a democracy, greater number of persons should be given the opportunity to participate in decision making. If all the Chief Executive Members, all Executive Members and all the Chairmen and all Deputy Chairmen of the District Councils are also members of the State Legislature, at least 18 percent of the total strength in the Khasi Hills, 23 percent of the total membership in the Garo Hills and 29 percent of the total number of members in the Jaintia Hills are denied of the opportunity to be elected to the District Councils. Further, if all the members
of the Meghalaya Legislative Assembly are also members of the District Councils then they will fill up 100 percent in the Khasi Hills, 80 percent in the Garo Hills and 35 percent in the Jaintia Hills. Lastly, if a member of the District Council is also a member of the State legislature, he may be able to influence the Minister for District Council Affairs to overlook any misdeed of the District Council.

A good trend was noticed in the Garo Hills in 1972 when the District Branch of the APHLC adopted a policy of one man - one office. Coincidentally, none of the members of the State Legislature from the Khasi Hills also is a member of the District Council. This is a good sign indeed.

Necessity for the improvement in the disqualification of members:
A close study of the disqualifications of candidates for election to the District Council we find that they are not comprehensive. Therefore, it is highly necessary to improve upon them so that the functions of these democratic institutions would become healthier. First, it is highly necessary that no person should hold double membership whether with the State legislature or with either House of Parliament. Secondly, members of a particular district council should be residents of such Autonomous District. Thirdly, members who failed to pay their dues to the District Council should be debarred from contesting any future election. We may go a step further that any member who defaulted in the payment of loans taken from the Government, banks or co-operative societies should be debarred from membership. Fourthly, members of the District Councils should be prohibited from interesting themselves in a subsisting contract with the District Councils. Such persons should not be allowed to contest future elections for a fixed period of time. Fifthly, members who have been surcharged for a
sum of Rs.500 and above should be disqualified for a certain period, so as to prevent them from practising fraud or embezzlement of public funds. Sixthly, it is high time to see that legal practitioners who appear on behalf or against the District Council should also be disqualified to contest the election to the District Councils. Finally, members who did not attend three consecutive meetings of the District Council might also be removed from membership of the District Councils.

Rights and Obligations: The Sixth Schedule and the Rules framed thereunder confer upon the members of the District Councils the rights and obligations which are similar to those of the members of any legislature. Every member of a district Council has the rights to put questions and supplementary questions, rights to participate in the debate and discussion and the right to vote and the right to access to records. But these rights are always subject to certain limitations. For instance, he cannot ask any question on any matter which is under adjudication by any court of law having jurisdiction in any part of the Indian Union and on any matter relating to the judiciary. There are also a number of other limitations which members must strictly observe. A member has also the right to call the attention of the Executive Committee on any matter under the jurisdiction of the District Council. Above-all, there is no provision for the recall of members. Thus, once elected, he has the right to remain as a member till the expiry of the term of the District Council.

The most important obligations of the members are: first, every member must take an oath of allegiance to the constitution. If a member fails to take the oath within the prescribed date, he ceases to be a member. The form of oath has been prescribed.

4. AAD Rules, 1951. Chapter IV of Part II.
Secondly, all members should attend the meetings of the District Council regularly. In case a member finds that at any time he is not able to attend the session for a period of 30 consecutive days, he must apply to the Chairman of the District Council for permission of such leave of absence. But in case a member does not inform the Chairman in spite of his absence for thirty consecutive days, the Chairman should inform the Council and may declare the seat vacant. Thirdly, another important obligation of the members is that they should pay the dues to the District Council or the Government or the Co-operative Societies in due time. Further, every member of the District Council must be liable for the loss, waste, or wilful misapplication of money or property of the District Council. Such losses must be recovered from the members concerned. It is unfortunate that this obligation has not been imposed by any of the district Council. Lastly, members of the District Council should not evince interest in any contract made with the district Council. But, shareholders of a corporation or members of a registered company are not deemed to come under the term of any contract entered between such company and the District Council. Such members who are shareholders should not participate in the disposal of such contract.

**Salaries and Allowances:** Members of all the three District Councils in Meghalaya are entitled to certain amount of salaries and allowances. All the District Councils give salaries and fixed allowances to members. But the amount paid varies from time to time and from one district council to another. Apart from salary and fixed allowances, members are also entitled to sitting allowance along with travelling allowance for coming from the
places of their residence to attend the session. The rate of such sitting allowance and travelling allowance also varied from time to time and from one district council to another.

Removal of Members: The Sixth Schedule and the Rules made thereunder to not provide for the removal of members either by the District Council or by Government. In case of any doubt about any want of qualification of any member, the matter must be referred to the Governor and his decision is final. On the other hand, any member may resign his seat at any time without assigning any reason thereof.

Division of Constituencies: For the purpose of election of members to the district Councils, each autonomous district is divided into a number of single member constituencies. At the time of making the delimitation of constituencies, the Deputy Commissioner must see that each constituency must be equal, to the other. That is to say, each constituency must contain, as far as possible, equal number of population. If one constituency has fewer voters, then each voter in that constituency will carry more weight than any voter in a constituency with more population. Of course, it is true that some concession may be made to geography, accessibility to the polling station, boundaries of local administrative units and the like. However, equality should be the principle that must be followed as a guide, and this principle must be followed as far as practicable.

In 1952, both the Garo Hills Autonomous District and the United Khasi-Jaintia Hills Autonomous District contained in each, 6-7. Ibid.
18 single member constituencies. The number of constituencies remained the same in the Garo Hills both in 1957 and in 1964. But United Khasi-Jaintia Hills Autonomous District was divided into 24 constituencies in 1957. In 1967, the Khasi Hills District was divided into 24 constituencies and the Jowai Autonomous District was divided into 12 single member constituencies. In 1972, Garo Hills was divided into 27 constituencies and Khasi Hills into 29 constituencies. In 1973, Jaintia Hills Autonomous District was divided into 16 constituencies.

Franchise: As regards franchise, it is provided that members of the District Councils shall be elected by universal adult suffrage. In order to be eligible to be a voter, a person must be a citizen of India. A person must be a resident in a constituency for not less than 180 days. A person must have reached the age of twenty-one. A person must not have been disqualified from voting under the provisions of election law. A person must be a member of any Scheduled Tribe. Lastly, a person must have registered himself or herself in the Electoral Roll. In the case of non-tribals, apart from other qualifications necessary for a voter, a person must have resided permanently within the Autonomous district concerned for not less than 12 years on the qualifying date.

Preparation of Electoral Roll: The preparation of the electoral roll is entrusted to the Deputy Commissioner. The electoral roll of a constituency of the legislative Assembly relating to the areas comprised within a constituency of a district council is adopted as the electoral roll for the district council elections.
Since the electoral roll is prepared by an officer and not by a politician, there is no scope for manipulation of the roll deliberately. There may be no doubt omissions and commissions, but they are not of such a magnitude as to effect the election results.

Procedure for the election of Members: The procedure for the election of members of the district council is similar to that of the election of members to the State Legislature. The Returning Officer must publish a notice, at least three weeks, before the date fixed for the election, stating the number of seats to be filled, the constituencies in which the election is to be held, the dates on which and the place at which the nomination papers should be presented and the date on which they would be taken up for scrutiny, the last date on which withdrawal is allowed, and the date on which the poll would be held.

Each candidate must be proposed and seconded by two persons who are enlisted in the electoral roll of the constituency from which the candidate intends to contest. The nomination papers must be signed by the proposer and the seconder. The candidate must also sign a declaration that he has agreed to be nominated. He must also declare that he has selected one of the symbols mentioned in the list. It must be noted that all symbols mentioned in the list are free symbols. No party can reserve any symbol for its candidates. He must also sign a declaration indicating the name of a person who will act as his election Agent. The nomination paper must be presented to the Returning Officer on or before the prescribed date, and it should be accompanied with a security deposit of Rs.150. If a candidate polls less than one-eighth of the total number of votes polled he shall forfeit his deposit.

10. Ibid.
At the time of accepting the nomination paper, the Returning Officer must see that the candidate does not suffer from any of the disqualifications prescribed in the Rules. In fact, the Returning Officer must assist the candidate in the presentation of the nomination paper.

**Scrutiny of Nomination papers:** On a date fixed by the Returning Officer for scrutiny of nomination papers, the candidates and their agents may be present. The Returning Officer must give all facilities to the candidates or their agents to raise any objection. The Returning Officers must reject the nomination of any candidate who is suffering from any of the disqualifications. But the reasons for rejection must be on substantial grounds and not on technical grounds. The decision of the Returning Officer is final.

Immediately after the scrutiny of nomination papers, the Returning Officer should allot different symbols to all candidates and then he must publish the list of candidates with their symbols for different constituencies.

Any candidate may withdraw his candidature on or before the prescribed date. Once a candidate has withdrawn from the contest he shall not be allowed to cancel his withdrawal.

**Uncontested Returns:** If the Returning Officer finds that in a particular constituency there is only one candidate, he must declare on the date of scrutiny that such a candidate has been elected unopposed.

**Poll:** On the date fixed for the poll, the Returning Officer must make all arrangements that election is conducted as peacefully as possible in all polling stations. Except a few cases, in nearly all the constituencies there are always contests. The electorate in Meghalaya has shown the same amount of enthusiasm during the 11-13. Ibid.
District Council elections as in the case of the Assembly elections.

Impersonation: 14 It is provided that any polling agent of any of the candidates can challenge the identity of a voter. But whenever a challenge is made, the candidate or his authorised agent making the challenge must deposit certain amount of money. This is intended to check frivolous challenging. The Presiding Officer should make a summary enquiry and decides the matter. The voter is, however, allowed to cast a tender vote after he has been informed of the penalty of impersonation.

Election Aids: 15 Each constituency has a number of polling booths. The Presiding Officer appoints one Polling Officer for each booth who is to be assisted by a number of polling assistants. Each Polling Officer is authorised to conduct the election in a particular polling booth. Apart from conducting the poll, the Polling Officer is also authorised to assist any voter who is ignorant or who is suffering from infirmity to vote according to the prescribed manner. The easiest method of assistance is a whispering ballot. By this method, the polling Officer sits by the ballot box in case any voter likes to get his assistance. In case a voter asks for assistance the Polling Officer will whisper to ascertain from the voter as to whom such voter would like to cast his vote. Then he will mark the ballot paper according to the wishes of the voter. This is the easiest system of assisting an illiterate voter. This system is satisfactory provided all the Polling Officers are impartial, non-partisan, honest and trustworthy. But if the Polling Officer is unscrupulous, he might stamp the mark in the ballot paper according to his own whims and fancies and not according to the wishes of the voters. In other words, if a Polling Officer is interested in a particular candidate he will put his mark in favour

14-15. Ibid of Part II.
of that candidate and not in favour of a candidate to whom the voters wish to vote.

This system suffers also from another defect. It may encourage unscrupulous candidates to practice intimidation and violence. They may compel the voters to seek the assistance of the Polling Officers with whom they might have had some understanding. Perhaps, this system has been adopted on the assumption that even voters who are literate outside may become illiterate as soon as they enter the polling booth. On the other hand, it violates the principle of secrecy and it may provide opportunities to practice fraud and violence. But so far this has not happened in Meghalaya.

The practice of whispering ballot seems no longer necessary. First, each candidate is expected to explain his symbol fully during his campaign. Secondly, each candidate usually arranges polling assistance to the voters a distance away from the polling booth to assist his supporters. Thirdly, in modern days, most of the candidates belong to the political parties, and these parties usually assist their supporters. Fourthly, after more than two decades, each voter, however, illiterate he or she might be, has learnt all the arts of voting. Lastly, the experience in Meghalaya is that there has been fewer number of rejected votes than in other areas of the country.

It is also provided that if the polling at any booth is disturbed by riot, open violence, or by natural calamity, the polling officer will immediately report to the Presiding Officer and the Presiding Officer should adjourn the poll and report immediately to the Governor the circumstances in which he is compelled to adjourn the poll.
Counting of votes: On a day fixed by the Returning Officer for the counting of votes, that is, after he had received all the ballot boxes, the Presiding Officers should count the votes and declare the result. The counting of votes should be done in the presence of the candidates or their election agents who will be assisted by their respective counting agents. In case of equality of votes, the matter must be decided by tossing the coin. This happened only once in Meghalaya.

Settlement of Election Disputes: It is also provided that if any one is not happy with the election result may file an election petition against a successful candidate before the Governor. For the purpose of deciding such a dispute, the Governor may appoint a Commissioner to hear and report on the election to him. The decision of the Governor is final.

A proper analysis of the elections held from time to time to the three district Councils in Meghalaya, it is found that the percentage of poll was quite good. In most of the constituencies, the average turnover was over fifty percent. A study of the proceedings of the three District Councils reveals the fact that in none of them there was any reference to any corrupt practice at the time of elections to the District Councils. Charges against systematic impersonation, deliberate manipulation of the voters list, illegal practices were absent. It must be noted that the hill people have developed a sportsman spirit in the case of elections. This is because the belief in democratic institutions is ingrained in the blood of the people.

16-17. Ibid of Part II.
Meetings. The date of the first meeting of the newly elected district council is fixed by the Governor. All newly elected members must be sworn into office. The first meeting shall be presided over by the Deputy Commissioner. Thereafter, regular meetings shall be presided over by the elected Chairman. Special meetings may be summoned by the Governor or by means of requisition signed by a specified number of members.

The quorum for the meeting of any District Council is six or one-third of the total membership of the council whichever is greater. If there is no quorum, the Chairman shall adjourn or suspend the meeting until there is a quorum.

The language used for the transaction of business in the Garo Hills District Council is the Garo language. In the Khasi Hills, Khasi language. But in the Jaintia Hills, both Khasi language and the Jowai dialect of the Khasi language are used. If any member cannot speak any of these languages, he may express himself in English or in his own mother tongue.

So far, the attendance of the members in all the three District Councils has been satisfactory. Normally, the attendance exceeded 75 percent. The proceedings of the District Councils were normally orderly.

18. Ibid. Chapter III of Part II.