

# IN THE HIGH COURT OF MEGHALAYA AT SHILLONG

**: ORDER :**

**PIL No.3 of 2014**

Smti. Agnes Kharshiing

..... Petitioner

- Versus -

State of Meghalaya and others

..... Respondents

**Date of Order:**

::

**23.08.2016**

**PRESENT**

**HON'BLE MR. JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE**

**HON'BLE MR. JUSTICE S.R. SEN**

**HON'BLE MR. JUSTICE VED PRAKASH VAISH**

Mr. N Syngkon, for the petitioner.

Dr. BP Todi, Advocate General, with Mr.ND Chullai for respondent No.1.

Mr. VGK Kynta, Sr.Adv, with Mr. KK Khongjoh, for the respondents No.6, 7, 8, 10, 11 12 and 13

Mr. N Mozika, for the respondent No.5

Mr. SP Sharma, for the respondent No.9

**AFR**

**BY THE COURT: (per Hon'ble the Chief Justice) (Oral)**

The petitioner, said to be a social activist, has filed this petition as a Public Interest Litigation [PIL] while seeking to raise the issue of alleged dual holding of offices by the respondents No.6 to 13 who were earlier elected as Members of the Meghalaya Legislative Assembly on 01.03.2013 but then, were also elected as Members of respective District Councils on 04.03.2014 inasmuch as the respondent No.6 was elected as member of Jaintia Hills Autonomous District Council and respondents No.7 to 13 were elected as Members of Khasi Hills Autonomous District Council. The petitioner has alleged that such dual holding of offices was entirely impermissible; was in violation of Rule 17 (1) (a) of the Assam and Meghalaya Autonomous Districts

(Constitution of District Councils) Rules, 1951; and was directly affecting the public exchequer also.

This PIL petition, filed on 30.10.2014, was initially considered on 03.11.2014 when notices were ordered to be issued to the respective parties. At the time of filing of this petition, the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972 [hereinafter referred to as 'the Act of 1972'] was in operation that provided for removal of disqualification in certain cases as specified in the Schedule thereto; and entry No.9 of the Schedule specifically removed any disqualification, if the Member of the Legislative Assembly was holding the office of the Chairman, Chief Executive Member, or other Executive Member or ordinary member of a District Council or was nominated to a District Council.

However, during the pendency of this petition, a drastic change was brought about in the said Act of 1972 by way of Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) (Amendment) Act, 2015 [Act No.12 of 2015 – hereinafter also referred to as the 'Amendment Act of 2015'], whereby the aforesaid entry No.9 of the Schedule to the Act of 1972 was omitted. The said Amendment Act of 2015 came into force w.e.f. 01.10.2015 but was published in the Gazette of Meghalaya on 08.10.2015. It has been brought to the notice of the Court that just before coming into force of the said Amendment Act of 2015, the respondents No.6 to 9 and the respondents No.11 to 13 chose to resign as Members of the respective District Councils.

After appearance of the parties and exchange of some of the pleadings, a Division bench of this Court [of which, one of us (S.R. Sen, J.) was a member] found that intricate but importance questions were involved in the matter and hence, by a detailed order dated

09.10.2015, referred this petition to the Larger Bench of this Court. The said order dated 09.10.2015, illuminating the questions involved in the matter, could be reproduced, *in extenso*, as under:-

"09.10.2015

*Having received the assent of the Governor of Meghalaya on 23.04.1972, the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972 was published in the Gazette of Meghalaya, Extraordinary dated 24.04.1972. Section 2 of Disqualification Act, 1972, provides that the person shall not be disqualified or shall not be deemed ever to have been disqualified for being chosen as, or for being, a member of Legislative Assembly of Meghalaya by reason of the fact that he holds any of the offices specified in the Schedule in so far as it is the office under the State Government. Entry No. 9 of the said Schedule mentioned the office of Chairman, Chief Executive Member, or other Executive Member or ordinary member of a District Council in an Autonomous District or any member nominated to a District Council by the Governor. For easy reference, the said Disqualification Act, 1972 is quoted hereunder:*

**"MEGHALAYA ACT 3 OF 1972  
THE PREVENTION OF DISQUALIFICATION (MEMBERS OF  
THE LEGISLATIVE ASSEMBLY OF MEGHALAYA) ACT, 1972**

(As passed by the Assembly)

(Received the assent of the Governor on the 23rd April,  
1972)

Published in the Gazette of Meghalaya, Extraordinary, dated  
24th April, 1972)

An

Act

*to declare certain offices of profit not to disqualify their holders  
for being chosen as, and for being, members of the Legislative  
Assembly of Meghalaya.*

*Be it enacted by the Legislature of Meghalaya in the  
Twenty-third Year of the Republic of India as follows:-*

1. (1) *This Act may be called the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972.*

(2) *It shall be deemed to have come into force on the 21st day of January, 1972.*

*Removal of  
disqualification  
in certain  
cases.*

2. *A person shall not be disqualified or shall not be deemed ever to have been disqualified for being chosen as, or for being, a member of the Legislative Assembly of Meghalaya by reason of the fact that he holds any of the offices specified in the Schedule in so far as it is an office of profit under the State Government.*

*Repeal of  
Meghalaya  
State  
Ordinance 1  
and 5 of  
1972*

3. *The Prevention of Disqualification (Members of the Legislative Assembly of the State of Meghalaya) Ordinance, 1972 and the Prevention of Disqualification (Members of the Legislative*

*Assembly of the State of Meghalaya) (Amendment) Ordinance, 1972 are hereby repealed.*

## *THE SCHEDULE*

*(See Section 2)*

- 1. Any office held by a Minister, Minister of State, Deputy Minister or Parliamentary Secretary for Meghalaya.*
  - 2. The office of the Minister of State or the Deputy Minister to the Government of Meghalaya.*
  - 3. The office of the Parliamentary Secretary to the Government of Meghalaya.*
  - 4. The office of the Government Pleader or Public Prosecutor.*
  - 5. The office of the part-time Professor, Lecturer, Instructor or Teacher in Government Educational Institution.*
  - 6. Medical practitioner rendering part-time service to Government.*
  - 7. The office of the Chairman, Vice-Chairman, or member of any Committee, Board or authority appointed by the Government of India or Government of any State specified in the First Schedule to the Constitution of India.*
- Explanation. – 1. “Committee” means any Committee, Commission, Council or any other body of one or more persons, whether statutory or not, set up by the Government of India or the Government of any State.*
- Explanation. – 2. “Board” or “Authority” means any corporation, company, society or any other body of one or more persons whether incorporated or not, established, registered or formed by or under any Central law or laws of any State for the time being in force or exercising powers and functions under any such law.*
- 8. Any office under the Government which is not a whole time office remunerated either by salary or fees.*
  - 9. The office of the Chairman, Chief Executive Member, or other Executive Member or ordinary member of a District Council in an autonomous District or any member nominated to such a District Council by the Governor.*
  - 10. Any office held in the Territorial Army or National Cadet Corps.*
  - 11. The office of the Speaker or Deputy Speaker of the Legislative Assembly of the Meghalaya.*
  - 12. The office of the Chairman or Vice-Chairman of the Municipal Board.*

13. Any office in a Village Defence Party (by whatever name called) constituted by or under the authority of the State Government.

14. The office of Chairman or Member of the Committee of any Cooperative Society (which is registered or deemed to be registered under any law for the time being in force relating to the registration of Co-operative Societies) to which appointment is made by the State Government, or the office of Liquidator or Joint Liquidator to which appointment is made by the Registrar of Co-operative Societies or the office of nominee of the Registrar whether appointed individually or to a board or nominees.”

*It appears from the record, more particularly from the letter of the Principal Secretary to the Governor of Meghalaya dated 22.09.2015 to learned Advocate General, Meghalaya that before the last election to the Khasi Hills and Jaintia Hills Autonomous District Councils, the former Governor, Dr. K.K. Paul, had taken up the matter regarding elected members of Legislative Assembly retaining their elected seats in the Autonomous District Council with the Chief Minister of Meghalaya on 08.01.2014. To that the Hon'ble Chief Minister had replied that in view of the specific exemption provided under the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972, Members of the Legislative Assembly could simultaneously hold membership of the Autonomous District Council. It is clear from the said letter of the Principal Secretary to the Governor, Meghalaya, dated 22.09.2015 that the petition dated 18.07.2014 of Smti. Agnes Kharshiing (present writ petitioner) in view of the provisions of the Prevention of Disqualification (Members of Legislative Assembly of Meghalaya) Act, 1972 cannot be considered. Again for easy reference, the said letter of the Principal Secretary to the Governor of Meghalaya, dated 22.09.2015 (Annexed to the Additional Affidavit dated 08.10.2015 filed by the Deputy Secretary to the Governor Secretariat, Meghalaya), is reproduced hereunder:*

“GOVERNOR'S SECRETARIAT  
MEGHALAYA:::SHILLONG -793001  
\*\*\*\*\*

No. GSMG.28/2014/665

Dt. 22nd September, 2015

From: Shri M.S.Rao, IAS  
Principal Secretary to the  
Governor of Meghalaya,  
Raj Bhavan, Shillong.

To : Shri. K.S. Kynjing,  
Advocate General,  
Meghalaya High Court,  
Shillong

Sub : PIL No. 3/2014.

Sir,

This has a reference to the Order dated 25.08.2015 of the Hon'ble High Court in PIL No. 3/2014. In this connection, I am directed to convey as follows:

1. Before the last Elections to the Khasi Hills and Jaintia Hills Autonomous District Councils, the former Governor, Dr. K.K. Paul, had taken up this matter regarding elected member of the Legislative Assembly retaining their elected seats in the Autonomous District Council with the Chief Minister of Meghalaya on 08.01.2014, to which the Chief Minister had replied that in view of the specific exemption provided under the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972, Members of the Legislative Assembly could simultaneously hold membership of the Autonomous District Council. Thereafter, the former Governor of Meghalaya Dr. K.K. Paul had referred this matter to the Union Home Minister on 14.02.2014 much before any representation was received from Smti. Agnes Kharshiing. In the said letter, it was pointed out that while the Prohibition of Simultaneous Membership Rules, 1950 prohibits simultaneous membership of Parliament and State Legislature, in the absence of an analogous enactment governing simultaneous membership in the Legislature and the Autonomous District Council in Meghalaya, there have been many instances of such simultaneous membership in the State. The letter also stated that, apart from the issue of the propriety of a person being sworn-in as both – Member of District Council and Member of State Legislature, there is a clear conflict of interest in terms of Para 12 A (a) of the Sixth Schedule which provides that if any law framed by the District Council is repugnant to any provision of law made by the State Legislature, then the latter shall prevail. In response, the Union Home Ministry has proposed an amendment to the Sixth Schedule by providing that if an elected member of District Council is chosen as member of the House of Parliament or Legislature of a State, his seat in the District Council shall become vacant.

2. In view of the above developments, the petition dated 18.07.2014 of Smti. Agnes Kharshiing was not acted upon. Moreover, in view of the provisions of the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972 and the inapplicability of Rule 17 (1) (a) of the Assam and Meghalaya Autonomous Districts (Constitution of District Councils) Rules, 1951 in the instant case, her petition cannot be considered.

3. The Hon'ble Governor shares the same views as stated in the letter dated 14.2.2014 of the former Governor mentioned at Para 1 above. It is therefore desirable that the proposed Amendment in the Sixth Schedule is carried out at the earliest. Alternatively, suitable amendment can be carried out in the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972.

Your may kindly apprise the Hon'ble High Court of Meghalaya accordingly.

Yours faithfully,  
Sd/-  
(M.S. Rao)  
Principal Secretary to the  
Governor of Meghalaya."

While the writ petition is pending, there was a drastic change in the Prevention of Disqualification (Members of Legislative Assembly of Meghalaya) Act, 1972 inasmuch as by the Act called "The Prevention of Disqualification" (Members of Legislative Assembly of Meghalaya) (Amendment) Act, 2015, Entry No. 9 of the said schedule had been omitted. Learned Advocate General, Meghalaya, submitted that the Prevention of Disqualification (Members of Legislative Assembly of Meghalaya) (Amendment) Act, 2015 had been published in the Gazette of Meghalaya Extra-Ordinary, Shillong, Thursday, October 8, 2015 after the assent of the Governor had been received. Learned Advocate General, Meghalaya, also placed a copy of the said Gazette and is quoted hereunder:

"The Gazette of Meghalaya  
EXTRAORDINARY  
PUBLISHED BY AUTHORITY  
No. 138 Shillong, Thursday, October 8, 2015 16th Asvina-1937 (S.E.)  
PART – IV  
GOVERNMENT OF MEGHALAYA  
LAW (B) DEPARTMENT  
ORDERS BY THE GOVERNOR

NOTIFICATION  
The 8th October, 2015

No. LL(B).151/85/275. – The Prevention of Disqualification (Members of Legislative Assembly of Meghalaya) Amendment) Act, 2015 (Act No. 12 of 2015) is hereby published for general information.

MEGHALAYA ACT NO. 12 OF 2015  
(As passed by the Meghalaya Legislative Assembly)  
Received the assent of the Governor on 8th October, 2015

Published in the Gazette of Meghalaya Extra-Ordinary  
issue dated 8th October, 2015."

The Prevention of Disqualification (Members of Legislative Assembly of Meghalaya) (Amendment) Act, 2015 is also quoted hereunder:

"THE PREVENTION OF DISQUALIFICATION (MEMBERS OF  
THE LEGISLATIVE ASSEMBLY OF MEGHALAYA)  
AMENDMENT) ACT, 2015

An  
Act

further to amend the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972.

Be it enacted by the Legislature of the State of Meghalaya in the Sixty-sixth Year of the Republic of India as follows:-

- |                                       |  |
|---------------------------------------|--|
| <b>Short title and commence-ment.</b> | 1. (1) This Act may be called the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Amendment) Act, 2015.            |
|                                       | (2) It shall come into force on and from 1st October, 2015.  |
| <b>Amendment of Schedule.</b>         | 2. In the Schedule to the Prevention of Disqualification (Members of the Legislative Assembly of Meghalaya) Act, 1972, entry No. 9 shall be omitted. |

**Repeal.** *3. The Prevention of Disqualification Members of the Legislative Assembly of Meghalaya) Act, 1970 (Act I of 1970) is repealed and consequent upon such repeal the provision of Section 22 of the Meghalaya Interpretation and General Clauses Act, 1972 shall apply.”*

*On bare perusal of the said Act, 2015, it appears that the present MLAs who hold the dual post i.e. the post of Chairman, Chief Executive Member and other Executive Member, or ordinary member of a District Council in Autonomous District or any member nominated in District Council are no more protected from disqualification. However, this question is left to the competent authority under Article 192 of the Constitution of India to take appropriate decision in his wisdom as to the disqualification of MLA holding the dual post in view of the “Prevention of Disqualification (Members of Legislative Assembly of Meghalaya) (Amendment) Act, 2015. It is also made clear that pendency of the present writ petition shall not cause any prejudice or bar the authority under Article 192 of the Constitution of India in taking his decision.*

*The present writ petition also called for decision of other important issues such as (i) as to whether or not the persons holding dual post are disqualified for holding both posts i.e. MLA and Member of the District Council? (ii) What will, be the effective date of disqualification of the concerned members if they are disqualified? (iii) Would the said Act i.e. The Prevention of Disqualification (Members of Legislative Assembly of Meghalaya) (Amendment) Act, 2015 be applicable in the present case or not? and other issues. We are of the considered view that such important issues are required to be decided by the Full Bench. Registry is directed to place this matter before the Hon’ble Chief Justice for his pleasure to constitute the Bench. List this case on 14.10.2015.*

*Registry is also directed to send copy of this order to the Principal Secretary to his Excellency Governor of Meghalaya, Special Law Secretary, Government of Meghalaya, and Secretary, Meghalaya Legislative Assembly, and all lawyers appearing in this case in the course of the day.”*

Thereafter, the matter was taken up on various occasions by a Full Bench of this Court of which, again, one of us (S.R. Sen, J.) was a member. At the given stage, it was informed that the question as to disqualification (of respondent No. 10) as Member of the Meghalaya Legislative Assembly was pending before the Governor for decision under Article 192 of the Constitution of India. This Court sought to know the progress of the matter as taken up by the Hon’ble Governor and certain orders were passed in that regard. Suffice it to notice for the present purpose that ultimately, it was given out on 15.12.2015 that



the Hon'ble Governor had referred the matter to the Election Commission for opinion towards compliance of Article 192 of the Constitution of India and the decision of the Governor was awaited. Thus, the matter was deferred to 13.01.2016, with this Court observing as under:-

*“..... Mr. PK Rai, learned Amicus Curiae submitted that there was no reason for the office of the Governor to keep the matter pending instead of making reference to the Election Commission under Article 192 of the Constitution of India after this Court had passed the first order, but that nevertheless, Mr MN Krishnamani, learned senior counsel, appearing for the State submits that since now the matter has been referred to the Election Commission towards compliance of Article 192 of the Constitution of India, in the light of observation made by this Court in the last order dated 24.11.2015, this case can await the decision of the Governor which would be taken upon receiving the opinion of the Election Commission. Though the matter has remained pending for quite sometime, but in view of submission of Mr. Krishnamani, we think it proper in the interest of justice to defer the hearing till 13.01.2016....”*

Thereafter, on 13.01.2016, it was pointed out that the Election Commission was still examining the matter and hence, this petition was adjourned for four weeks. Thereafter, this petition has come up before the Larger Bench constituted today.

Now, the relevant subsequent event has been indicated in the supplementary affidavits filed by the respondent No.1 and respondent No.10 in this matter to the effect that the question of disqualification of the respondent No.10-Shri Pynshngainlang Syiem has finally been decided by the Hon'ble Governor on 31.05.2016 in terms of the opinion of the Election Commission of India, who has opined that the respondent No.10 cannot be said to be holding the office of profit under the Government within the meaning of Article 191 (1) of the Constitution and hence, he has not attracted disqualification. The Hon'ble Governor's order dated 31.05.2016 is placed on record by the respondent No.10 with his affidavit; and the same has also been placed on record with the affidavit filed on behalf of the respondent

No.1 with a copy of the opinion of the Election Commission of India dated 10.05.2016.

As noticed, so far the other respondents, whose so-called holding of dual offices was also sought to be questioned, have already resigned as Members of District Council ['MDCs'] in or around the last week of September, 2015 i.e., just before enactment of the Amendment Act of 2015 [Act No.12 of 2015], which came into force on and from 01.10.2015.

Upon taking up this matter, learned counsel for the petitioner has attempted to suggest that the order as passed by the Hon'ble Governor under Article 192 of the Constitution of India is also subject to judicial review to which, we have queried as to whether any challenge has been put up seeking judicial review of the said order dated 31.05.2016? In response, learned counsel for the petitioner has attempted to submit in the first place that he may be permitted to amend this petition because earlier, this matter was deferred on several occasions awaiting decision of the Governor, while also submitting that the PIL jurisdiction of this Court is wide and vast enough to deal with any issue of public importance. In the alternative, learned counsel submitted that he may be permitted to withdraw from this petition so as to file a fresh petition. Learned counsel also attempted to submit that so far the other respondents were concerned, in fact, they had been holding the office at the time of filing of this petition; and they resigned as MDCs only after filing of this petition and just before promulgation of the Amendment Act of 2015 [Act No.12 of 2015].

On the other hand, learned Advocate General appearing for the respondent No.1 has submitted that when the Hon'ble Governor has

passed the order dated 31.05.2016 under Article 192 of the Constitution of India in relation to the respondent No. 10 that has not been challenged; and other concerned respondents have already resigned as MDCs, nothing survives in this petition. According to the learned Advocate General, if any challenge to the said order dated 31.05.2016 is suggested, the same would only be of a fresh cause of action. Learned counsel Mr. VGK Kynta and Mr. SP Sharma appearing for the contesting respondents as also Mr. N Mozika, learned counsel appearing for the respondent No.4, have adopted the same line of submissions that so far this PIL is concerned, nothing survives; and challenge to the order passed by the Hon'ble Governor could only be of a fresh cause of action.

Having given anxious consideration to the entire matter, we are inclined to close the proceeding in this petition in view of the relevant subsequent events but while keeping the question of challenge to the order dated 31.05.2016 open, of course, strictly in accordance with law.

So far the respondents No.6 to 9 and respondents No.11 to 13 are concerned, who are shown to have resigned as MDCs on or about last week of September, 2015, in our view, it is difficult to find a surviving cause of action qua them, particularly when the matter of their resignation is *fait accompli* and there appears hardly any reason now to take up any question in regard to holding of different offices by the said respondents in this petition.

So far the respondent No.10 is concerned, the Hon'ble Governor has passed the order on 31.05.2016 in his regard on the basis of the opinion of Election Commission of India dated 10.05.2016. True it is that this Court had earlier deferred the matter awaiting the decision of

the Hon'ble Governor but thereby, it cannot be assumed that this Court kept the challenge to the order of the Governor also open to be taken up in this petition as framed. We are clearly of the view that if at all any challenge is sought to be taken up by any person against the said order dated 31.05.2016, that is a matter of fresh cause of action, to be taken up strictly in accordance with law.

There is no quarrel with the proposition on vastness of PIL jurisdiction of this Court but, in the given circumstances, we see no reason to grant the prayer for amendment of this petition because, as noticed, any challenge to the order dated 31.05.2016 is a matter of fresh cause of action, where the cause, if at all, has to be taken up on different parameters; and the scope and extent of enquiry is also different.

To sum up, we may observe that basic cause of action of this petition does not survive for two reasons: One, because of resignation of respondents No.6 to 9 and respondents No.11 to 13 as MDCs; and second, for the decision of the Hon'ble Governor dated 31.05.2016 qua the respondent No.10.

Hence, in the given circumstances, the questions referred in the order dated 09.10.2015 could only be considered redundant, not calling for determination in this petition.

So far alternative submissions made by the learned counsel for the petitioner for withdrawal with permission to file a fresh petition are concerned, suffice it to say that if at all the order dated 31.05.2016 as passed by the Hon'ble Governor is sought to be questioned, closure of the proceeding in this petition, by itself, shall not be of any impediment in taking up in such proceedings, but strictly in accordance with law.

Subject to the observations foregoing, when we find nothing further to be adjudicated or answered herein, this petition stands disposed of.

**JUDGE**

**JUDGE**

**CHIEF JUSTICE**

*Lam*

Item No.2