

Assam
Legislative Assembly
Debates

OFFICIAL REPORT

SECOND SESSION OF THE ASSAM LEGISLATIVE
ASSEMBLY UNDER THE SOVEREIGN
DEMOCRATIC REPUBLICAN CON-
STITUTION OF INDIA

SEPTEMBER SESSION

VOLUME II

No. 11



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ASSAM LEGISLATIVE ASSEMBLY

GOVERNMENT OF ASSAM

GOVERNOR OF ASSAM

SHRI JAIRAMDAS DOULATRAM

Members of the Council of Ministers

(1) Shri Bishnuram Medhi, M.Sc., B.L., the Chief Minister and Minister-in-charge of Appointment, Home, Co-ordination of all Departments, Departments relating to Autonomous Districts and Welfare and Development of Tribes living in Plains and Hills, Co-ordination of the Five-Year Plan with Development of the State and matters relating to Election.

(2) Shri Siddhinath Sarma, B.Sc., B.L., the Minister-in-charge of Public Works Department (including Embankment and Drainage and Flood Protective Measures), Transport and its Nationalisation.

(3) Shri Motiram Bora, M.A., B.L., the Minister-in-charge of Finance and Revenue (including Mines and Minerals, Distribution and Allotment of land, Land Reforms, Land Development and Land Reclamation, Acquisition of Zamin-dary Departments), Relief and Rehabilitation Departments, Chairman, Minority Commission and all other works in connection with the Implementation within the State of the Agreement recently concluded between the Prime Ministers of India and Pakistan.

(4) Shri Omeo Kumar Das, B.A., the Minister-in-charge of Labour and Labour Welfare, Education, Development of Backward Areas and Welfare of Backward Classes and Tribes.

(5) Shri Mohendra Mohan Choudhury, B.L., the Minister-in-charge of Food, Pisciculture, Agriculture including Grow-More-Food, Co-operative, Rural Development, Weaving, Sericulture, Cottage Industries and Publicity Departments.

(6) Shri Baidyanath Mookerjee, B.A., the Minister-in-charge of Supply, Procurement, Consumer Goods, Textile, Development of Trade and Commerce, Development of Major Industries and Planning Departments.

(7) Shri Rupnath Brahma, B.L., the Minister-in-charge of Medical, Public Health and Judicial Departments.

(8) Shri Ramnath Das, B.L., the Minister-in-charge of Forests, Legislative (excluding matters relating to Election), Electricity and General (including Printing and Stationery) Departments.

(9) Rev. J. J. M. Nichols-Roy, B.A., the Minister-in-charge of Excise, Jails, Registration and Stamps.

(10) Maulavi Abdul Matlib Mazumdar, M.A., B.L., the Minister-in-charge of Local Self-Government, Veterinary and Livestock Departments.

Deputy Ministers

1. Shri Hareswar Das, M.A., B.L., Deputy Minister-in-charge of Revenue, Relief and Rehabilitation Departments.

2. Shri Purnananda Chetia, B.A., Deputy Minister-in-charge of Labour, Labour Welfare and Education Departments.

Parliamentary Secretary

(1) Shri Pu. Ch. Saprawanga, B.A., Parliamentary Secretary in-charge of Public Works Department.

**Proceedings of the Second Session of the Assam Legislative Assembly
assembled after the first General Election under the Sovereign
Democratic Republican Constitution of India.**

The Assembly met in the Assembly Chamber, Shillong at 10 A.M., on
Wednesday, the 3rd September, 1952.

P R E S E N T

Shri Kuladhar Chaliha, B.L., Speaker, in the Chair, nine Ministers, the
two Deputy Ministers, one Parliamentary Secretary and seventy-four Members.

Oath of Allegiance

The following member was sworn in—

1. Pu Lalbuai.

Panel of Chairmen

Mr. SPEAKER: The following Members will form the Panel of Chairmen
for the present Session :—

1. Shri Bimala Kanta Borah,
2. Shri A. Alley,
3. Shri Gaurisankar Bhattacharyya, and
4. M. Moinul Haque Chaudhury.

QUESTIONS AND ANSWERS

STARRED QUESTIONS

(To which oral answers were given)

Professor of Physiology in the Assam Medical College

Shri BIMALA KANTA BORAH asked :

- *1. Will Government be pleased to state—
 - (a) Who is the Professor of Physiology in the Assam Medical College now ?
 - (b) Whether the said Professor has got the requisite qualification to be in charge of this Department ?
 - (c) Whether it is a fact that his contract period is shortly going to be over and that he is trying for extension ?

Shri RUPNATH BRAHMA (Minister) replied :

1. (a)—Dr. S. C. Das, M.B., F.R.S.E., Ph.D. (Edin.).
 - (b)—Yes.
 - (c)—His term of contract will be over on 30th September, 1952. Govern-ment have no information.

Shri BIMALA KANTA BORAH: May I know whether Dr. Das has got any degree in Physiology ?

Shri RUPNATH BRAHMA (Minister): I cannot exactly say about that, but he has got the requisite qualifications. According to the Indian Medical Council the necessary qualifications is to have experience in teaching for five years and he has got that experience.

Shri BIMALA KANTA BORAH: My question has not been replied. I want the Government to help me by giving me the information whether this gentleman has got any degree in Physiology.

Shri RUPNATH BRAHMA (Minister): I cannot reply that particular question at the moment. I shall give the information to the hon. Member later on, if desired.

Shri BIMALA KANTA BORAH: Is there any Doctor in that Department who has got a degree in Physiology?

Shri RUPNATH BRAHMA (Minister): This is altogether a new question. I want notice.

Shri BIMALA KANTA BORAH: As regards (c), when is his term going to expire?

Shri RUPNATH BRAHMA (Minister): The answer is already there. His term of contract will be over on 30th September, 1952.

Shri BIMALA KANTA BORAH: Is he trying for extension?

Shri RUPNATH BRAHMA (Minister): That reply is also there. Government have no information, that means he is not trying for extension.

Shri BIMALA KANTA BORAH: Do Government propose to give him extension?

Shri MOHENDRA MOHAN CHOUDHURY (Minister): How does that arise?

Shri BIMALA KANTA BORAH: It does arise in this way: he is trying for extension and Government say that they have no information.

Shri RUPNATH BRAHMA (Minister): That means he has not applied for extension. However, for the information of the hon. Member I may tell him that Government have already decided not to give him any extension.

Re: Kamarbhundha Ali

Shri RAJENDRA NATH BARUA asked:

*2. Will Government be pleased to state whether they are going to take up the Kamarbhundha Ali, one of the main arteries between Golaghat and Jorhat (F) from Kakodunga river to Dhodar Ali—a distance of about 6 miles passing through the Dukhenhengra Mouza, Golaghat Subdivision and (II) from Kakodunga river to Rowriah?

Shri SIDDHINATH SARMA (Minister) replied:

2.—The entire road from Rowriah to Kamarbhundha Ali is included in the Five-Year Development Plan. This project as well as others so included in the Development Plan awaits sanction of funds of Government of India and will be taken up as soon as sanction is received.

Shri RAJENDRA NATH BARUA: May I know when is it likely to be materialised ?

Shri SIDDHINATH SARMA (Minister): I cannot say. It all depends on the Government of India.

Settlement of land near old Jorhat Railway Station

Shri MAL CHANDRA PEGU asked :

*3. (a) Is it a fact that a valuable piece of land near old Jorhat Railway Station has been given to Shri Golap Chandra Barbara, retired Headmaster, Government High School, Jorhat ?

(b) Are Government aware that this gentleman owns a vast area of land in Chari Gaon Mouza and he has got houses and buildings on his own land at Kenduguri Bamungaon which is about a mile from the town ?

(c) What are the reasons for granting land to this gentleman ?

Shri MOTIRAM BORA (Minister) replied :

3. (a)—Yes.

(b)—Government have no information.

(c)—He was given the land in question on the recommendation of Sub-Deputy Collector and Deputy Commissioner as he does not own any land in the town.

Shri MAL CHANDRA PEGU: Before giving him land in the Jorhat Town, Government should have taken all information.

Shri MOTIRAM BORA (Minister): Government did take information. His petition was sent to the Deputy Commissioner for an enquiry. The Sub-Deputy Collector enquired into it and recommended that land was available and he might be given. The Deputy Commissioner endorsed that recommendation. So the settlement was made on the recommendation of the Deputy Commissioner and the Sub-Deputy Collector.

Shri BIMALA KANTA BORAH: Is it town land ?

Shri MOTIRAM BORA (Minister): Yes.

Shri BIMALA KANTA BORAH: What is the approximate value of the land ?

Shri MOTIRAM BORA (Minister): I cannot say off-hand. But since it is a piece of land on the outskirts of the town, the value may be anything between Rs. 1,000 to Rs. 2,000.

Shri BIMALA KANTA BORAH: What is the area of the land ?

Shri MOTIRAM BORA (Minister): Probably about half a bigha. I am not definite and cannot give the exact information without records.

Shri HARESWAR GOSWAMI: When was that land settled with Shri Golap Chandra Barbara ?

Shri MOTIRAM BORA (Minister): Probably about a year back.

Shri HARESWAR GOSWAMI: Was any other land settled with anybody else ?

Shri MOTIRAM BORA (Minister): Probably some other lands have also been settled.

Shri HARESWAR GOSWAMI: Is it a fact that one plot of land was settled with one Muralidhar Baheti, a famous businessman of Jorhat ?

Shri MOTIRAM BORA (Minister): Yes, Sir.

Shri RANENDRA MOHON DAS: On what principle did the Deputy Commissioner recommend settlement with Shri Barbara ? Is he a landless person ?

Shri MOTIRAM BORA (Minister): He did not own any land in the town.

Shri RANENDRA MOHON DAS: That does not mean that he is landless. Has he got any land outside town ?

Mr. SPEAKER: Order, order. This is an argument.

Shri MAL CHNDRA PEGU: My information is that he has got 30 *bighas* of land in his native village of Kenduguri Bamungaon where he has got ten houses and buildings. Besides that he has also got about hundred *puras* of land elsewhere.

Shri MOTIRAM BORA (Minister): May be, Government have no information. That piece of town land was given to him because he had no land in the town.

Shri GAURISANKAR BHATTACHARYYA: May I know from Government whether Muralidhar Baheti has already had any land in the town ?

Shri MOTIRAM BORA (Minister): Muralidhar Baheti was given a small strip of land which is contiguous to his own land—but where it is, I do not exactly remember—and it was done on the recommendation of the Deputy Commissioner. This contiguous land was given to him at a valuation of one lakh or half a lakh of rupees per *bigha*.

Shri HARESWAR GOSWAMI: Sir, is it a fact that there is no plot of land to be settled at Jorhat ? I am speaking of all land there. My information is that about a year ago the Deputy Commissioner, Sibsagar said that there was no plot of land in Jorhat town to be settled with people.

Shri MOTIRAM BORA (Minister): No, Sir, it is not like that.

Shri MAL CHANDRA PEGU: Is it not a fact, Sir, that one Shri Rameswar Barua and another Shri Muktanath Barua who reside at a distance of about half a mile from the town have no land in the town? Why they are not provided any land in Jorhat town?

Shri MOTIRAM BORA (Minister): There are a lot of people who have no land in the town. The case of the first named person mentioned by the hon. Member, who is a retired Headmaster, was recommended by the Deputy Commissioner and on his recommendation a plot of land for him was made available. His is a deserving case.

Shri BIMALA KANTA BORAH: May I know, Sir, why such cases were not dealt with by the Land Advisory Board?

Shri MOTIRAM BORA (Minister): There was no Land Advisory Board, Sir, at that time as far as I remember now, and it was also not considered proper, in view of Deputy Commissioner's report.

UNSTARRED QUESTIONS

(to which answers were laid in the table)

Treatment of T. B. Patients in Assam Medical College

Shri RAMESH CHANDRA BAROOAH asked:

1. (a) Are Government aware that the present arrangement for treatment of T. B. patients in Assam Medical College, Dibrugarh, is most inadequate and unsatisfactory?

(b) If so, will Government be pleased to state what steps have been taken to remove the present unsatisfactory state of things?

Shri RUPNATH BRAHMA (Minister) replied:

1. (a)—A T. B. Ward in the Assam Medical College is not considered adequate or ideal.

(b)—Plans and estimates for a T. B. Ward prepared to improve the present arrangements are under examination.

Shri RAMESH CHANDRA BAROOAH: Are Government contemplating to shift the T. B. ward from the present site or improving at the present site, Sir?

Shri RUPNATH BRAHMA (Minister): We are thinking of shifting this ward to Barbari.

Construction Work of the Gauhati University

Shri RAMESH CHANDRA BAROOAH asked:

2. (a) Will Government be pleased to state what progress has been made up till now of the construction works of the Gauhati University?

(b) Will Government be pleased to enquire and state what steps have been taken by the Gauhati University Development Committee to collect donations?

Shri OMEO KUMAR DAS (Minister) replied :

2. (a)—Tenders for construction of two Science Blocks have been accepted and the contractors are making preliminary arrangements to start the work.
 (b)—The Gauhati University is taking steps for collection of donations.

Shri BIMALA KANTA BORAH: May I know Sir, when the actual work is going to be started ?

Shri PURNANANDA CHETIA (Deputy Minister): Collection of materials for actual work has already been started, Sir.

Shri BIMALA KANTA BORAH: When is it likely to be completed, Sir?

Shri PURNANANDA CHETIA (Deputy Minister): It is not possible to say when it will be completed ; but it will take some time.

Shri BIMALA KANTA BORAH: Is it a fact, Sir, that there is a proposal to invite the Rastrapati Dr. Rajendra Prasad to open the University ?

Shri PURNANANDA CHETIA (Deputy Minister): Government have no information, Sir, about this matter except what appears in the Press.

Shri BIMALA KANTA BORAH: Does it not indicate the time, when the building house is going to be completed ?

Shri PURNANANDA CHETIA (Deputy Minister): I may inform the hon. Member that the Rastrapati is not invited to open the building but to lay the foundation stone of the building as it appears in the Press.

Shri BIMALA KANTA BORAH: What class of contractors is selected to start the work ?

Shri PURNANANDA CHETIA (Deputy Minister): No informations can be furnished about this as the matter is entirely under the control of the Gauhati University Development Committee.

Shri BIMALA KANTA BORAH: Sir, the Government reply to (b) is that "the Gauhati University is taking steps for collection of donations". May I know, Sir, what are the definite steps ?

Shri PURNANANDA CHETIA (Deputy Minister): Government have no information about this except that the Gauhati University Development Committee is requesting the University to take the matter of collection into their hands.

Shri BIMALA KANTA BORAH: Is it a fact, Sir, that the matter for collection of donations is in charge of a non-official body with which Government has nothing to do ?

Shri PURNANANDA CHETIA (Deputy Minister): Yes, Sir.

Shri BIMALA KANTA BORAH: Have Government any information about the amount of money that has been collected ?

Shri PURNANANDA CHETIA (Deputy Minister): Government has no information

Shri RAMESH CHANDRA BAROOAH: Have Government any information about the amount that has been promised by various persons in this connection ?

Shri PURNANANDA CHETIA (Deputy Minister): Government has no such information.

Shri RAMESH CHANDRA BAROOAH: Is it a fact that late Lokopriya Bordoloi went round the countryside and was able to secure promise about donation of huge sums but no steps are being taken to collect them now ?

Shri PURNANANDA CHETIA (Deputy Minister): It may be, Sir, but Government is not directly concerned with the collection of the donation and cannot force the people to contribute to the fund.

Shri BIMALA KANTA BORAH: Is it a fact that Government is not taking any interest in the funds of the University ? The manner in which they are taking interest in collection of funds shows that.....

Mr. SPEAKER: It is not a question. That is an argument.

Shri PURNANANDA CHETIA (Deputy Minister): So far Government are concerned, they are satisfied with the steps the University Development Committee has taken.

Newspaper Caption re: "ভূদায়ব ধান"

Shri RAMESH CHANDRA BAROOAH asked:

3. (a) Has the attention of Government been drawn to the editorial of 'Natan Asamiya', dated 20th July 1952 entitled "ভূদায়ব ধান" ?
- (b) Is the allegation contained therein that 9 (nine) thousand maunds of paddy stored in Government godown at Khowang ghat has been damaged by flood owing to timely precaution being not taken—true ?
- (c) If so, have Government tried to ascertain who is responsible for such a huge loss ?

Shri BAIDYANATH MOOKERJEE (Minister) replied:

3. (a) —Yes.
- (b)—No. The report is highly exaggerated and has been contradicted. Owing to sudden onrush of water about 700 maunds of paddy got wet but was immediately disposed of without any loss to Government.
- (c)—Does not arise.

Erosion of Dibrugarh Town by the Brahmaputra

Shri RAMESH CHANDRA BAROOAH asked:

4. Will Government be pleased to state—
 - (a) The steps taken to stop erosion of Dibrugarh Town by the Brahmaputra ?

(b) Whether the Union Government have been moved to help the Government of Assam in fighting the measure of erosion ?

(c) The amount so far spent by Government for the above purpose as :—

(i) Permanent measure ; and

(ii) Temporary measure ?

5. (a) Is it a fact that Mr. Curry, Bengal Irrigation Chief Engineer, submitted a report on the erosion of Dibrugarh Town by the Brahmaputra in the year 1937 ?

(b) If so, will Government be pleased to—

(i) lay on the table a copy of the said report ; and

(ii) state what steps were taken to implement the suggestions contained in the said report ?

Shri SIDDHINATH SARMA (Minister) replied :

4. (a)—Temporary protective measures undertaken in 1950 are being continued where valuable Public Buildings are situated. As regard permanent protective measures which are likely to cost over a crore of rupees, the State Government could not undertake the same for want of funds. But strong representation has been made to India to sanction a grant for this under the Five-Year Plan.

(b)—Yes, as stated above.

(c) (i)—Nil.

(ii)—Rs. 2,27,000 (Rupees two lakhs twenty seven thousand) only have been incurred during 1950-51 and 1951-52 on temporary measure and Rs. 50,000 (Rupees fifty thousand) only have since been sanctioned by Government for expenditure during this year, *i. e.*, 1952-53.

Shri RAMESH CHANDRA BAROOAH: Are Government satisfied with the temporary measures taken so far ?

Shri SIDDHINATH SARMA (Minister): It is a matter of opinion, Sir.

Shri SIDDHINATH SARMA (Minister) replied :

5. (a)—Yes.

(b) (i)—A copy of Mr. Curry's report is laid on the Library table for the information of members.

(ii)—The recommendations could not be implemented by the then State Government for paucity of funds.

Maternity and Gynæcological wards in the Assam Medical College

Shri RAMESH CHANDRA BAROOAH asked :

6. (a) Is it a fact that there is no provision for separate bath rooms for the patients of the Maternity and Gynæcological wards in the Assam Medical College, Dibrugarh ?

(b) Have Government received a representation from Dibrugarh Mahila Samiti seeking redress of the above grievance ?

(c) If so, what steps have been taken to remove the grievances ?

Shri RUPNATH BRAHMA (Minister) replied :

6. (a)—Yes.

(b)—Yes.

(c)—Plans and estimates prepared for the project are under consideration.

Shillong-Jowai-Garampani Road and Shillong-Jowai-Badarpur Road

Shri KISTOBIN RYMBAI asked :

7. Will Government be pleased to state the amount of compensation paid for damages, removal, etc., of the paddy fields, houses, etc., caused by the construction of—

(1) the Shillong-Jowai-Garampani Road ; and

(2) the Shillong-Jowai-Badarpur Road ?

Shri SIDDHINATH SARMA (Minister) replied :

7. (1)—The question of payment of compensation for damages done to and removal of houses, paddy fields, etc., caused by the construction of Shillong-Jowai-Garampani Road awaits completion of certain formalities such as (i) obtaining concurrence of Finance and Revenue Departments to the valuation done by Revenue officer, (ii) issue of authority slip by the Accountant General, etc., which have actively been taken up by Government.

(2)—Detailed valuation for compensation to be paid for in connection with the construction of Jowai-Badarpur Road has been called for from local officers.

Number of Primary Trading Co-operatives in Assam

Shri RADHA CHARAN CHOUDHURY asked :

8. Will Government be pleased to state how many Primary Trading Co-operatives were formed in Assam during the last four years and how many of them are dissolved by this time ?

Shri MOHENDRA MOHAN CHOUDHURY (Minister) replied :

8.—Total number of Primary Trading Co-operatives registered since the inauguration of the Scheme in November 1948 upto August 1952 are 998 out of which only 6 Primary Trading Co-operatives have till now been sent into liquidation.

Shri RADHA CHARAN CHOUDHURY : Will Government be pleased to state what are the reasons for such liquidation ?

Shri MOHENDRA MOHAN CHOUDHURY (Minister): Sir, six societies went on liquidation and they are as follows:—

Name of Trading Co-operatives	Date of liquidation	Causes of liquidation
(1) Dhansirikash Trading Co-operative Limited, Mangaldoi.	3rd June 1952 ...	All these three co-operatives did not function since its registration. So after, result of an enquiry under section 60(1) of the Assam Co-operative Act, 1949 (Act I of 1950) Societies were sent into liquidation.
(2) Barigaon Trading Co-operative Limited, Mangaldoi.	2nd ,, 1952 ...	
(3) Badagaon Trading Co-operative Limited, Mangaldoi.	29th April 1952...	
(4) Solmari Trading Co-operative Limited, Goalpara.	23rd ,, 1952 ...	The records and properties of the Society have been burnt by fire. As there was no possibility of recovering its assets, and members have also lost all confidence in the Society, it was sent into liquidation after an enquiry under Section 60(1) of Assam Co-operative Societies Act, 1949.
(5) Baida Trading Co-operative Limited, Goalpara.	21st July 1952 ...	The Society ceased to function from 19th February 1949. So after result of an enquiry under Section 60(1) of the Assam Co-operative Societies Act, 1949 the Society was sent into liquidation.
(6) Patukata Trading Co-operative Limited, Nowgong.	29th ,, 1952 ...	Due to Party friction and financial difficulties, the Society could not function well. So after, result of an enquiry under section 60(1) of the Assam Co-operative Societies Act, 1949 (Act I of 1950) the Society was sent into liquidation.

Selection of Candidate for Sub-Registrarship

Shri JOGAKANTA BARUAH asked :

9. (a) Is it a fact that Shri Prafulla Kumar Bordoloi stood first in order of merit in the examination held by the Assam Public Service Commission for the selection of a candidate for Registration, Co-operative and Secretariat, as published in the *Assam Gazette* dated 16th February 1949 ?

(b) Is it a fact that he has not been selected a Sub-Registrar but the one who stood fifth in order of merit ?

The Rev. J. J. M. NICHOLS-ROY (Minister) replied :

9. (a)—Yes.

(b)—Yes. Appointments were not given according to seniority in the list as the question of communal representation had to be taken into consideration. A candidate of unrepresented community, that is, Ahom was first given the offer. But when he refused, it was offered to an Assam Valley Caste Hindu candidate No. 5, as No. 1 was already employed in the Secretariat which was one of the services for which he expressed his preference. So it was not considered proper to disturb that office by offering him the appointment.

Shri JOGAKANTA BARUAH: Did he prefer present service to that of Sub-Registrarship ?

The Rev. J. J. M. NICHOLS-ROY (Minister): The reply is there, Sir. It says that No.1 who was already employed in the Secretariat service which was one of the services for which he expressed his preference.

Shri JOGAKANTA BARUAH: Sir, it is not clear that he prefers the present service.

Mr. SPEAKER: What is your supplementary question ?

Shri JOGAKANTA BARUAH: Did he prefer his present service ?

The Rev. J. J. M. NICHOLS-ROY (Minister): The fact is that during the year 1948, *i. e.*, about four years ago, there were some candidates for Sub-Registrars, Co-operative and Secretariat Subordinate services, and this gentleman, *i. e.*, No.1 had given his preference to all the services mentioned above. As a matter of fact, he was already in the Secretariat Subordinate Service. So it was not considered proper to disturb that office by offering him the appointment in another service.

Shri BIMALA KANTA BORAH: Was there any advertisement for those jobs ?

The Rev. J. J. M. NICHOLS-ROY (Minister): Yes.

Shri BIMALA KANTA BORAH: Was that also mentioned in the advertisement that communal representation of under-represented communities will be taken into consideration ?

The Rev. J. J. M. NICHOLS-ROY (Minister): I don't think that was given in the advertisement, but the policy was already there.

Shri BISHNURAM MEDHI (Chief Minister): Sir, after the Constitution has come into force, except the Scheduled Castes, Scheduled Tribes and Tribal People, there is no reservation to any other class of people, in the matter of appointment to public services till certain classes are declared as belonging to the backward class needing such reservation.

Mr. SPEAKER: Yes.

Announcement made by the Speaker regarding resignation of seats in the Assembly by certain Members

Mr. SPEAKER: In pursuance of sub-rule (1) of rule 98A of the Assam Legislative Assembly Rules, I hereby inform the House that Pu R. Thanhlira, and Maulavi Mahammad Roufque, two elected Members of the Assam Legislative Assembly representing respectively the L.A. No.2 Aijal East (Reserved for Scheduled Tribes) Constituency and L.A. No.65 Laharighat Constituency resigned their seats in the Assembly by writing to me with effect from the 15th April, and 10th April, 1952 respectively. In the case of the former the seat has been filled in by election by Pu Lalbuai.

Adjournment Motion regarding the arrest of Maulavi Sahadat Ali Mandal, a Member of the Assam Legislative Assembly

Mr. SPEAKER: I have got a notice of an adjournment motion by Shri Hareswar Goswami. The Motion was received at 9:30 A.M. to-day by the Secretary, Legislative Assembly. I shall read out his Motion now according to the custom that prevails here.

“I beg to move that the Assembly do now adjourn to discuss a definite matter of urgent public importance and recent occurrence, *viz.*, the inability of Mr. Sahadat Ali Mandal, Member of this Assembly, to attend this Assembly, due to his arrest and continued detention since 14th July last under the Maintenance of Public Order Act.”

I would now like to hear the Honourable Leader of the House on this matter.

Shri BISHNURAM MEDHI (Chief Minister): It was really unfortunate that Shri Sahadat Ali Mandal had to be arrested and produced before the Magistrate. The arrest was made under Section 8B of the Maintenance of Public Order Act for criminal offence *viz.*, prejudicial act within the meaning as given in the explanation of the section and was produced before a magistrate who remanded him to the jail custody on the 15th July last. On that very day the Subdivisional Officer sent the information to the Hon'ble Speaker about his arrest, and subsequently also when Government received the information, the Chief Secretary on behalf of Government sent the information about his arrest to the Hon'ble Speaker by his letter, dated the 18th July 1952, and

the Hon'ble Speaker acknowledged receipt of the Chief Secretary's letter and that he had already received the intimation from the Subdivisional Officer. On examination of the complete materials of this case the Government came to the conclusion that the evidences in the case were of such a nature that their disclosure in an open court would not be in the public interest, and at the same time the accused person being at large would be prejudicial to the security of the State. Government decided to detain him under the Preventive Detention Act. An order under the Preventive Detention Act was accordingly issued and sent to the Magistrate, Goalpara for service, and the accused person had already been lodged in the Special Jail, Nowgong. It will not be possible for me in the interest of public as well as the security of the State to disclose further evidence that we have in our possession in this particular case. Shall I say anything about the other facts also ?

Shri HARESWAR GOSWAMI: Before the Leader goes to the other facts, he has stated certain points which to my information are not correct.

Mr. SPEAKER: It is not for you, you have no chance.

Shri HARESWAR GOSWAMI: If you please allow me to move the Motion.

Mr. SPEAKER: That is not the way.

Shri BISHNURAM MEDHI (Chief Minister): In the evening of 1st September 1952 a wireless message was received from the Subdivisional Officer, Goalpara to the effect that an order under Preventive Detention Act was served on Shri Sahadat Ali Mandal, M.L.A., in the morning of 1st September 1952, and that he was kept detained in the Special Jail, Nowgong. This wireless message was issued direct to the Speaker of the Assembly, Assam, and the fact also was intimated to the Speaker by a letter of the Chief Secretary, dated the 2nd September, 1952. Action strictly according to law has been taken against the M.L.A. and he has been furnished with a copy of the grounds of detention, and he is at liberty to make a representation to Government against the detention order. His case also will be submitted before the Advisory Board for their consideration as required under the law. Now, regarding this adjournment motion also, if I may be permitted to say, it can lie only if there is any breach of privilege or any other rights that a Member can claim. Under article 194 of the Constitution—I will read from sub-clause (1)—“Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State”. As sub-clause (2) does not apply here, I will read sub-clause (3)—“In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution”. It will appear that the members of the State Legislature have got the powers, privileges or immunities at the time the Constitution came into force as members of Parliament of the United Kingdom. In absence of any legislation or Act has been passed either by Parliament of India or by our own Legislature, Members of Parliament or Members of the State Legislature enjoy all rights and privileges that are enjoyed by

Members of Parliament in the United Kingdom. As will be seen from clause (3) of article 194—powers, privileges and immunities of Members may be defined by law by the Legislature and until so defined they shall be similar to those powers, privileges and immunities of the Members (as I have already stated) of the Parliament of the United Kingdom at the commencement of the Constitution.

Parliament has not yet defined any privileges and immunities of the Members, and as no legislation has yet been passed specifying the powers, and immunities, the rights, privileges and immunities of Members of our State Legislature are those of the Members of Parliament of the United Kingdom. It follows, therefore, that unless Members of the House of Parliament in England are immune from detention under executive order made under an Act similar to the Indian Preventive Detention Act, no such immunity can be claimed for Members of the House of Legislature in this country.

It appears that at the present time in England, the privilege of freedom from arrest is limited to civil cases and has not been allowed to interfere with administration of criminal justice. Sir Erskine May in his book on Parliamentary Practice, quotes from the journals of the House of Commons, 1939-40, which summarises the position thus—"A review of the development of the privileges reveals a tendency to confine it more narrowly to cases of civil character and to exclude not only every kind of criminal cases but also cases which, while not strictly criminal, partake more of a criminal than of a civil character. This development is in conformity with the principle laid down by the Commons in a conference with the Lords, 1941". "Privilege of Parliament is granted to the service of the Commonwealth and it is not to be used to the danger of the Commonwealth," as in this particular instance the hon. Member was acting prejudicial to the interest of the Indian Union, as he was supplying information to persons not interested in the welfare of the Indian Union.

During the last war, the House of Parliament in the case of one Capt. Ramsay, had to consider whether detention under orders made under power given by the Defence of the Realm Act constituted breach of the privileges and whether the member of Parliament detained under such order could not be released at the instance of Parliament. The matter was referred to a Committee of Privileges which reported that the arrest and detention of a member did not amount to a breach of parliamentary privileges. The conclusions of the Committee of Privileges are summed up as follows:—"Your Committee's conclusions are as follows—All precedents lent no support to the view that Member of Parliament are exempted by privileges of Parliament from detention under regulation 18 (b) of the Defence (General) Regulations, 1939. Preventive arrest under statutory authority by an executive order is not within the principle of the cases to which the privileges from arrest has been decided to extend. To claim that the privileges extend to such cases would be either an assertion of a new parliamentary privilege or an unjustified extension of an existing one".

Recently same point came up for consideration before a Committee of Privileges of our House in Deshpande's case. The House of the People being our own Parliament, the precedents in the House of Commons naturally should be accepted and followed in other State Legislatures. These are the points that came up before the Committee. The Committee addressed itself to the following two questions as arising out of the case—whether the arrest of Shri V. G. Deshpande under the Preventive Detention Act, 1950, constitutes a breach of the privileges. As regards the first question, the law and practice in the House of Commons are as follows—"Arrests on criminal charge for indictable offence does not constitute a breach of privilege". The Preventive Detention Act has been passed under authority given under article 22 of the Constitution. Preventive arrest

under statutory authority by executive orders is not within the principle of cases to which the privilege of freedom from arrest has been decided to extend. The Committee is accordingly of opinion that the arrest of Shri V. G. Deshpande, under the Preventive Detention Act, 1950, did not constitute a breach of the privileges of the House. I would like to draw the attention of the Speaker and the Members of the House to a decision in a similar matter of the Madras High Court.

"In the absence of any definition by Legislature, at present every member of the Legislature of the State has all the powers, privileges and immunities which a member of the House of Commons at Westminster is entitled to.

These privileges and immunities are freedom from arrest for the persons of members during the continuance of session and for forty days before its commencement and after its conclusion.

This immunity from arrest extends only to arrest for a civil debt and not to Preventive Detention or, where the member is charged with an indictable offence.

Consequently, a member of the Madras Legislature cannot claim immunity from being detained under the Madras Maintenance of Public Order Act, and in such cases no writ of habeas-corpus can issue."

Another case was also decided in Calcutta about which I may mention :—

A special bench of the Calcutta High Court has also held that when a member of either House of the Legislature is detained by an otherwise valid order of detention under the Preventive Detention Act, but claims freedom from arrest, the claim is a claim to a privilege or an immunity which does not exist and accordingly no petition for writ of habeas-corpus lies on his behalf before the High Court.

To sum up, it is clear that in England the immunity extends to freedom from arrest for civil process or for a debt due for forty days prior to the commencement and for the same time after a session. It is also clear that this immunity does not extend to indictable offence at all. And according to the views of the Committee of the Privileges of the House of Commons as well as the decision of the Calcutta and Madras High Courts it will appear that the arrest under executive order exercised under a statute *viz.*, Preventive Detention Act is not within the purview of the cases to which the privileges from arrest has been decided to extend.

In view of what I have stated, Sir, the adjournment motion, I think is out of order.

Mr. SPEAKER : I should like to hear the Advocate General in regard to the legal position of the matter so that we get the benefit of his advice.

Shri S. M. LAHIRI (Advocate General) : Mr. Speaker, Sir, the position as stated by the Leader of the House is, I think, clear and I can only repeat what he has said.

Under Article 194 of the Constitution, clause (3), the rights and privileges of the Members of the Legislature are those as are available to a Member of the House of Commons until any legislation is enacted by the State Legislature. Now, it appears that so far as the Members of the House of Commons are concerned, it is well settled that they cannot be arrested for a defined period in execution of a civil process. It is equally settled that the Members are not immune from arrest on charge of indictable criminal offences. Now, the question whether a Member who had been arrested and detained, not on criminal charge but, under a Detention Act or Regulation could claim immunity was also considered in England in the case of Captain Ramsay. One Captain Ramsay, a Member of Parliament, was arrested and detained under the British 18 B Defence Regulation, 1939, and the question of the immunity of the Member from arrest was raised in the House of Commons. The Speaker of the House of Commons referred the matter to the

Privileges Committee and the Privileges Committee, after due deliberations, came to the conclusion that a Member is not immune from arrest if he is arrested under an executive order in pursuance of the provision of a Statute, and this position was accepted by our Parliament in the case of Shri Deshpande. In this case the Member was arrested under Section 3 of the Preventive Detention Act of 1950 and the question was raised whether the Member was immune from arrest. The Speaker referred the matter to a Privileges Committee and the Privileges Committee came to the conclusion by following the English precedent that the Member was not immune from arrest when the arrest was made under the Preventive Detention Act—under an executive order in pursuance of the Preventive Detention Act. It further appears that this matter was considered by the Madras High Court on a habeas corpus petition, and the Madras High Court held that a Member is not immune from arrest under the Preventive Detention Act. Very recently the matter came up for consideration of the Calcutta High Court, and a Special Bench of the Calcutta High Court held that the immunity from arrest cannot be claimed by a Member when he is arrested under the Preventive Detention Act. This is the present position. Of course, it is open to the Legislature to legislate that in such case a Member would be immune from arrest, but that is a different matter. The position is that the Members of the House of Commons are not immune from arrest when the arrest is under a Preventive Detention Regulation, and that precedent was followed by our Parliament in the case of Shri Deshpande when he was arrested under Section 3 of the Preventive Detention Act. And as pointed out before, there is similar decision by the Calcutta High Court and the Madras High Court that the Member is not immune from arrest under the Preventive Detention Act.

Mr. SPEAKER: Mr. Md. Sahadat Ali Mandal, M. L. A., wrote a letter to me on the 26th of August, 1952, and the same was received by me on the 29th of August at 7-30 A. M. intimating that he was detained in Goalpara lock-up jail though he has been summoned to attend the Assembly Session. I received a letter also from Mr. Hareswar Goswami that Mr. Sahadat Ali was arrested on the 14th of July and kept detained and stated that he was summoned to attend the Assembly, but was not released to attend it and this inability would involve a question of privilege and so he requested the Speaker to secure his release (by which he meant, I think, to secure his attendance in the House).

However, before the receipt of Mr. Goswami's letter on the 30th of August, 1952, I asked the Secretary, Legislative Assembly, Assam to address the Chief Secretary to arrange escort for the Member to bring him to the House and also to inform the Member that steps had been taken for his attendance in the House. Mr. Goswami was also informed duly on the 30th of August, 1952 about the steps taken. In response to the letter to the Chief Secretary a reply was received from him on the 1st of September at 1-30 P. M., intimating, that the Member was arrested under Section 8B of the Assam Maintenance of Public Order Act and remained in the custody of Goalpara Jail. He further submitted that it was not possible to arrange his production as desired by the Speaker in the absence of an order of an appropriate court. This was rather enigmatical. Did it indicate that the Speaker has to do something in the matter and not the Government? I find it very difficult to appreciate the contents of these few lines. If it meant that the Speaker should move the appropriate court, that would be unfortunate, and if it even meant that the Government is not in a position to act appropriately as desired, will still be more unfortunate. But from the few lines following this, I think, his intention was to convey that the detention order will be enforced in due course and as such he was unable to produce the Member. The Speaker

is not certainly expected to arrange escort for his production and it is for the Government to do so. I would emphasise that authority of the Legislature is supreme in this matter and the Government should always try to carry out the wishes of the House as expressed through the Speaker. However, the Chief Secretary intimated later that Government is going to detain him under the Preventive Detention Act and the order was in the process of being served. It is difficult to take a decision on the process of doing something by the Government and so far as I am concerned, until the notice is served on the Member, he is a free man and I cannot act any other way more than what I have done.

Under those circumstances the Speaker could only stick to the former order ; however the Subdivisional Officer, Goalpara, intimated me on the 1st of September at 11-15 P. M., that an order under the Preventive Detention Act on Mr. Sahadat Ali has been served and he is kept confined at Nowgong Special Jail. Now the question was whether he was detained under the Preventive Detention Act ; if so, whether the Government can be asked to produce him ? We have recently seen the question of privilege which was discussed in every detail in the House of the People when Mr. Deshpande was arrested. The question of privilege was referred to a Committee of the House of the People the majority of which decided that the—

(1) arrest on a criminal charge for an indictable offence does not constitute a breach of privilege ;

(2) preventive arrest under statutory authority by executive orders is not within the principle of cases to which the privilege of freedom from arrest has been decided to extend.

Though a distinguished minority opined that the privilege of freedom from arrest of Members of Parliament is of great antiquity under the English Law, "This privilege was of proved indispensability first to the service of the King and now to the functioning of each House" as Sir Erskine May has put it in his celebrated book on Parliamentary Practice.

Under the English Law it is clear that a Member of Parliament can be arrested on a criminal charge for an indictable offence. But the House must be informed of the cause for which he is detained from the service of Parliament.

But the minority in Deshpande's case further held that the preventive detention is in essence detention to prevent him from committing any illegal or injurious act, while in the other case detention is for having committed an illegal act.

We have an English precedent in Captain Ramsay's case where it was clearly laid down that preventive detention under statutory authority by executive order excludes the privilege of freedom of arrest.

Maulavi Sahadat Ali Mandal has been detained under the Preventive Detention Act and the order has been duly served. Under the circumstance I withdraw my previous order and the Government need not produce him before the House. There has been no breach of privilege in this case as I have stated before and I was duly informed of his arrest as early as on the 18th July by the Chief Secretary and the Subdivisional Officer sent me an intimation on the 15th July which was received by me at Jorhat on the 18th at 9-30 A. M. Thus there was no delay in intimating me about the hon. Member's arrest.

I disallow the Adjournment Motion. However, I feel that we should have a Committee where such matters could be referred to and the benefit of the advice of the Committee obtained. I shall request the Leader of the House to bring a resolution recommending the formation of a Privileges Committee or amend the rules in such a way so that we may have automatically a Privileges Committee to enquire into such matters.

I disallow this Adjournment Motion on this ground.

Adjournment

The Assembly was then adjourned till 10 A.M. on Thursday, the 4th September, 1952.

Shillong
The 7th November 1952.

R. N. BARUA,
Secretary,
Legislative Assembly, Assam.