

WP(C) No.20 of 2020

CHUNG CHUNG LEPCHA

...PETITIONER

VERSUS

THE STATE OF SIKKIM AND ANR.

...RESPONDENTS

Date: 01.09.2020

CORAM:

THE HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE

...

Heard Mr. Yam Kumar Subba, learned Counsel for the petitioner. Also heard Mr. Vivek Kohli, learned Advocate General, Sikkim for the respondents.

In the Writ Petition, Notice was issued on 16.07.2020, making it returnable on 09.09.2020. An Interlocutory Application, registered as I.A No.01 of 2020, was filed on 25.08.2020 praying for an interim order restraining the respondents from implementing the impugned notification dated 15.05.2020, whereby a Committee was constituted to select beneficiaries pertaining to various rural development schemes including Sikkim Garib Awas Yozna.

The I.A was taken up for consideration on 27.08.2020. On that day, learned Advocate General prayed for time till Monday and accordingly, the case is listed today for hearing on I.A No.01 of 2020.

Mr. Subba submits, amongst others, that Section 11 (b) of the Sikkim Panchayat Act, 1993 provides that identification of beneficiaries for implementation of development schemes pertaining to a village is a function entrusted to Gram Sabha and therefore, the notification is in contravention of the aforesaid provision.

Mr. Kohli has sought to justify the impugned notification by placing reliance on, amongst others, Sections 10 of the Sikkim Panchayat Act, 1993 and Article 243(G) of the Constitution of India and he submits that the notification was issued in the prevailing situation arising out of COVID-19 and it cannot be said that such notification in any way encroaches upon the functions of the Gram Sabha. He also submits that the prayer for interim order may be

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considered after an affidavit is allowed to be filed by the respondents by 04.09.2020, so that a comprehensive view of the matter can be taken.

Mr. Subba submits that if an affidavit is allowed to be filed by the respondents, he may be permitted to file a reply affidavit within such time as may be considered appropriate by the Court. He submits that the impugned notification, may, in that event, be stayed till the next date for ends of justice.

Having heard the learned Counsel for the parties and considering the prayers made, Mr. Kohli is permitted to file affidavit by 04.09.2020. Mr. Subba may file reply affidavit on or before 08.09.2020.

The Registry will list the Writ Petition as well as I.A No.01 of 2020 on **09.09.2020**.

As, prima facie, the impugned notification appears to be not in consonance with Section 11(b) of the Sikkim Panchayat Act, 1993, the impugned notification dated 15.05.2020 is stayed till 09.09.2020. It is made clear that after the affidavits are exchanged, interim prayer made by the petitioner in I.A No.01 of 2020 shall finally be considered.

Chief Justice

Avi/