

HIGH COURT OF SIKKIM, GANGTOK
(Civil Extraordinary Jurisdiction)

D.B. : HON'BLE SHRI SUNIL KUMAR SINHA, C.J. &
HON'BLE SHRI SATISH KUMAR AGNIHOTRI, J.

W.P. (PIL) No. 06/2015

Shri Biraj Adhikari,
Son of Shri T. P. Sharma,
Resident of Baha'l School Road,
Tadong, Gangtok, East Sikkim.

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PETITIONER

Versus

1. State of Sikkim,
Notice through
The Chief Secretary,
Govt. of Sikkim,
Office of the Chief Secretary,
Gangtok, East Sikkim.
2. The Secretary,
Home Department,
Govt. of Sikkim,
Gangtok, East Sikkim.
3. The Secretary,
Land Revenue & Disaster Management Department,
Govt. of Sikkim,
Gangtok, East Sikkim.
4. The District Collector,
East District,
Sichey, Gangtok, East Sikkim.
5. The District Collector,
South District,
Namchi, South Sikkim.
6. The District Collector,
West District,
Tikjuk, Gyalshing, West Sikkim.
7. The District Collector,
North District,
Pentok, Mangan, North Sikkim.

8. The Director General,
Sikkim Police,
Police Headquarter,
National Highway, Gangtok.
9. The Station House Officer,
Sadar Police Station,
Gangtok, East Sikkim.
10. Union of India,
Notice through
The Secretary,
Home Ministry,
North Block, New Delhi.

... **RESPONDENTS**

Appearance :

Mr. Sudesh Joshi and Mr. Tengop Subba, Advocates for the
Petitioner.

Mr. J. B. Pradhan, Addl. Advocate General with Mr. S. K.
Chettri and Ms. Pollin Rai, Asstt. Govt. Advocates for State-
Respondents 1, 2 and 3.

Mr. Karma Thinlay, Central Government Advocate for
Respondent No. 10.

O R D E R

(20.06.2016)

Following Order of the Court was delivered by

SUNIL KUMAR SINHA, CJ. –

1. Land Revenue and Disaster Management Department,
Government of Sikkim issued an Appeal (Annexure-P10) some times in
the year 2010 that Pink cards were to be issued to the genuine Sikkim
Subject holders because it was in the knowledge of the Government
that 31,180 reported false cases were there in which fake certificates
were issued.

2. When no action was taken for a long period, the Petitioner, an Electronic Engineer and the President of Sikkim National Peoples' Party (SNPP), took up the matter and started collecting various documents through RTI and other sources. It was found that even after admission of the Government to the above effect, the Government was not inclined to take any action against the false Sikkim Subject holders. In this connection, one Mr. Deepak Rai of Daragaon, Tadong, East Sikkim had lodged an FIR with Sadar Police Station, Gangtok on 04.12.2010 which was registered against 31,180 unknown persons but no investigation was conducted. When status of the report through RTI application was sought, it was informed that no action had been taken on the FIR as only the respective District Collectors were the competent authorities to file FIR with the police in matters like above. The Petitioner, thereafter, made representation to the District Collector, East District, Gangtok on 15.03.2015 to take immediate action against the holders of the fake Sikkim Subject Certificate (SSC)/Certificate of Identification (COI) but the Collector also did not take any action and the matter remained unattended. As contended by the Petitioner, *dharna* outside the premises of Collectorate in East Sikkim at Gangtok was held on 20.03.2015 and, thereafter, similar *dharnas* were held at Namchi, South Sikkim on 31.08.2015 and Gyalshing, West Sikkim on 02.09.2015 demanding immediate action in the matter but the same also were ineffective. The Petitioner, thereafter, filed this Writ Petition styled as Public Interest Litigation (PIL) on 28.09.2015.

3. The matter came before this Court on 15.10.2015 on which date notices were issued to Respondents 1, 2, 3 and 10 to make their responses on limited issue as to what action was taken by the Government after the above numbers of reported false cases came to their notice in the year 2005.

4. Respondents 1 and 3, in view of the order dated 15.10.2015, filed two affidavits dated 25.01.2016 and 17.02.2016. In affidavit dated 25.02.2016, it was stated that the entire file relating to the alleged fake certificates was lost from the Land Revenue & Disaster Management Secretariat, Gangtok and it was not traceable in spite of their best efforts. This Court, on the said day, issued certain directions and called for other information contained in the order (see Order dated 23.02.2016). On 08.03.2016, Mr. C. T. Wangdi, Secretary, Land Revenue & Disaster Management, Government of Sikkim filed his own affidavit dated 07.03.2016, stating that the missing file was traced on 25.02.2016. The Learned Additional Advocate General, thereafter, was directed to prepare district-wise list of those 31,180 persons, who, according to the Government, were falling within the category of the reported false cases of issuance of certificates as contained in Annexure P-10. District-wise lists were filed on 05.04.2016. While hearing the matter, this Court asked from the Additional Advocate General about further course of action in the matter. Learned Additional Advocate General submitted that the State will firstly scrutinize the above 31,180 cases and then the suitable ones would be referred to the concerned

District Collector for conducting an enquiry and passing an order in accordance with law. He also prayed for 10 days' time to file an affidavit stating the manner in which they will undertake the above exercise.

5. In the above background, the State filed an affidavit dated 16.04.2016, stating the manner in which it proposed to verify the alleged certificates. Paragraph 3 of the affidavit is relevant, we quote: -

“It is submitted that in order to carry out the scrutiny of 31,180 doubtful cases of Sikkim Subject Certificate/Certificate of Identification, the records maintained in the District Collectors Office shall be obtained. The details mentioned by the applicants in their applications for grant of Certificate of Identification will be verified from the original register maintained in the Respondent No. 3 Department. It is further submitted that from the list of 31,180 doubtful cases, if cases are found to be doubtful in the scrutiny, the same shall be referred to the concerned District Collector for further inquiry and cancellation, if necessary, in accordance with the Notification No. 119/Home/2010 dated 26.10.2010. A copy of the said Notification is annexed herewith and marked as Annexure A-1.”

6. The Petitioner filed response to the affidavit dated 16.04.2016 and suggested that an independent three members Probe Committee headed by a retired Chief Justice of High Court may be constituted and it may be directed to conduct an enquiry in the matter. The Petitioner also suggested to take Mr. Akshay Sachdeva, IPS, Director, Sikkim Vigilance Police and an IAS officer of impeccable repute as the two members of the Committee. The matter, thereafter, was fixed for hearing.

7. Mr. Sudesh Joshi, learned Counsel appearing on behalf of the Petitioner, vehemently argued that the Government did nothing since last 10-15 years, therefore, it would not be proper to direct them to hold enquiry as the same would be an endless exercise. He also argued that constitution of a Committee in the above manner would be in the larger public interest.

8. On the other hand, Mr. J. B. Pradhan, learned Additional Advocate General appearing on behalf of the Respondents, opposed these arguments and submitted that the Collector is the competent authority to deal with such matters, therefore, the suggestions made by the Government may be accepted.

9. We have heard Counsel for the parties.

10. Let us firstly consider as to why the matter relating to SSC assumes importance? The Petitioner, in his affidavit dated 05.04.2016, has stated the benefits available to the SSC holder. The SSC holder acquires Indian Citizenship; he/she gets benefit in Government service under the Government of Sikkim; he/she can hold landed property in the State of Sikkim; he/she gets exemption from payment of income tax on income accruing in Sikkim and on dividend income; he/she gets referral from Sikkim to higher medical centres for treatment; and he/she gets scholarships in schools and colleges. It is thus clear that if

the undeserving persons are issued fake certificates or they obtain such certificates by fraud or mis-representation, it would not only be a concern of State or Central Government simplicitor but it would also be the concern of the genuine citizenry of Sikkim because the fake certificate holders may also come forward in competition with them while exercising their genuine rights. It is for all these reasons the Government in its reply agreed to hold an enquiry against the alleged fake certificate holders, which they declare in their appeal (Annexure P-10).

11. Mr. Joshi has mainly two objections to the suggestions made by the Government. His apprehension is that the Government may not take the job on priority basis and the delay may prolong to infinity that the District Collectors may not act fairly in the enquiries for proposed cancellation. We may note that the petition does not have any pleading relating to allegations of apprehension of unfairness or *malafides* on the part of the District Collectors. Thus, both the arguments being based on no material on record deserve to be rejected.

12. There is already a law prevailing in the State of Sikkim for cancellation of the Certificate of Identification (COI). The Government of Sikkim, on 26.10.2010, has introduced certain amendments vide Notification No.590 published on 01.11.2010. The said notification has been filed as Annexure A-1 to the affidavit dated 16.04.2016 filed on

behalf of the State Government. The relevant provisions contained in the notification are as under: -

“SIKKIM GOVERNMENT GAZETTE
EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok Monday, 1st November, 2010 No. 590

GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK

No. 119/Home/2010 Dated: 26/10/2010

NOTIFICATION

In partial modification of Notification No. 66/Home/95 dated 22nd November, 1992 as amended vide Notification No. 57/Home/96 dated 27th September, 1996 the State Government hereby makes the following amendments with immediate effect:

- (1)
- (2)
- (3)
 - (a)
 - (b)
 - (c)
- (4) After the last paragraph the following shall be inserted namely:

“The issuing authority is also authorized to cancel the Certificate of Identification of a person if it is reasonably established that the Certificate has been obtained by him/her or on his/her behalf by misrepresentation or suppression of any material fact.

Any person aggrieved by the refusal to grant or cancellation of his/her Certificate of Identification by the Issuing Authority may apply within one month of such refusal or cancellation to the Secretary, Land Revenue & Disaster Management Department for redress.”

BY ORDER AND IN THE NAME OF THE GOVERNOR.

TT Dorji, IAS
Chief Secretary
File No. Home/Confdl/158/1994/Part”

The contents of the above notification would show that the Issuing Authority has already been authorized to cancel the COI of a person on certain grounds and it also provides that if a person is aggrieved by the refusal to grant or cancellation of his/her COI by the Issuing Authority,

he/she may apply to the Secretary, Land Revenue & Disaster Management Department, Government of Sikkim for redressal. Thus, two forums are made available to a person whose certificate has been cancelled or who has been refused by the authority in the matter of grant of certificate. The first forum is in form of original jurisdiction and the second is in form of appellate jurisdiction.

13. In **Narmada Bachao Andolan vs. Union of India & Ors. : (2000) 10 SCC 664**, it was held that while protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework, a fairly clear demarcation of powers. While exercising jurisdiction in PIL cases the court has not forsaken its duty and role as a court of law dispensing justice in accordance with law. It is only where there has been a failure on the part of any authority in acting according to law or in non-action or acting in violation of the law that the court has stepped in. No directions are issued which are in conflict with any legal provisions. Directions have, in appropriate cases, been given where the law is silent and inaction would result in violation of the fundamental rights or other legal provisions.

14. In the instant case, we have already a law which gives powers to the concerned authority to pass an order of cancellation of COI on certain grounds which certainly includes the power of enquiry, which has to be conducted before passing any such order. Not only this, there

is also a provision akin to appellate provision. Thus, the position is that the law is not silent. Moreover, Mr. Joshi has not assigned any special reason for constitution of a Committee in the above manner in which the Petitioner also suggested the name of an IPS officer.

15. In the above facts and circumstances, we deem it appropriate to direct the Respondents to carry out scrutiny and enquiry in the manner contained in paragraph 3 of affidavit dated 16.04.2016 (supra). And we do it accordingly. Needless to say that the District Collectors shall make enquiry strictly in accordance with law.

16. Learned Additional Advocate General has prayed for 3 (three) months' time. We grant it and direct the Respondents to file a suitable affidavit showing status on or before the next date of hearing.

17. List on 19.09.2016.

Sd/-
Judge
20.06.2016

Sd/-
Chief Justice
20.06.2016

Approved for Reporting : Yes/No.
Internet : Yes/No.

pm