



THE HIGH COURT OF SIKKIM : GANGTOK

WP(C) NO.7 OF 2006

In the matter of a Public Interest Litigation under
Article 226 of the Constitution of India

and

in the matter of

1. Shri Gayching Bhutia,
S/o Late Tenzing Bhutia,
R/o Phodong,
North Sikkim.
2. Shri Ugen Nedup Bhutia,
S/o Shri Dawa Tshering Bhutia,
R/o Phensong,
North Sikkim. **..... Petitioners.**

versus

1. The Union of India
represented by the Secretary
to the Government of India,
Ministry of Rural Development,
Department of Rural Development,
Krishi Bhawan,
New Delhi - 110 001.
2. The State of Sikkim,
through its Chief Secretary,
having his Office in Tashiling Secretariat,
Gangtok, East Sikkim.
3. The Secretary,
Rural Management & Development Department,
Gramin Vikas Bhawan,
Government of Sikkim,
Gangtok.
4. The District Development Officer,
North District,
Mangan,
North Sikkim.
5. The Director,
Vigilance Department,
Government of Sikkim,
Gangtok.

F.R.

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6. The Central Bureau of Investigation,
Special Police Establishment,
C.G.O. Complex,
Lodhi Road,
New Delhi – 110 003
through its Director,
Gangtok, East Sikkim.
7. Namgay Bhutia,
Panchayat President,
Rongong Tumlong Busty,
P.O. Phodong,
North Sikkim.
8. Chochung Bhutia,
Panchayat Secretary,
Rongong Tumlong Busty,
P.O. Phodong,
North Sikkim.
9. Tashi Thagay,
Panchayat President,
Chawang Busty,
P.O. Phamtam,
North Sikkim.
10. Thinley Yazer Bhutia,
Panchayat Secretary,
Phensong Busty,
P.O. Phensong,
North Sikkim.
11. Nima Sherpa,
Panchayat President,
Kabi Tingda G.P.U.,
P.O. Kabi,
North Sikkim.
12. Tashi Lhendup Bhutia,
Panchayat Secretary,
Kabi Tingda G.P.U.,
P.O. Kabi,
North Sikkim.
13. Palden Bhutia,
Zilla Up-Adhsksha,
Eung-Gang, Kabi,
P.O. Kabi,
North Sikkim.

..... Respondents.

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For Petitioners : Mr. M. Z. Ahmed, Senior Advocate with Ms. B. Dutta, Advocate for the Petitioners.

For Respondents : Mr. Karma Thinlay, Central Government Standing Counsel for Respondent No.1.
Mr. S. P. Wangdi, Advocate General for the State-Respondents.
None appears for Respondent Nos.6 to 13.

**PRESENT : THE HON'BLE MR. JUSTICE A.N. RAY, CHIEF JUSTICE.
THE HON'BLE MR. JUSTICE A. P. SUBBA, JUDGE.**

Last date of hearing : 19th March, 2008

DATE OF JUDGMENT : 29th April, 2008

J U D G M E N T

A. N. RAY, CJ.

I have had the advantage of reading Brother Subba's judgment with which I agree.

Ajoy Nath Ray

A. P. SUBBA, J.

In this application filed as PIL under Article 226 of the Constitution of India, a prayer has been made for issuance of a direction to the Respondent Nos.5 and 6 to conduct an enquiry into the alleged gross mismanagement of public money by the Implementing Authorities in the course of implementation of two schemes, namely, Sampoorna Grameen Rozgar Yojna (in short "SGRY") and National Food For Work Programme (in short "NFFWP") in Kabi Tingda Assembly Constituency in North District of Sikkim for the year 2004-05, under the supervision of this Court.

2. The facts leading to the filing of this Public Interest Litigation, in a nutshell, are that two schemes, namely, SGRY and


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NFFWP were sanctioned for implementation in Kabi Tingda in the North District of Sikkim after it was identified by the Central Government as one of the 150 backward Districts of the country. These schemes were formulated as a Government policy to create employment opportunities with food security with a view to alleviate poverty, reduce inequalities, improving nutritional levels and sustaining a reasonably high pace of economy growth. Such schemes were to be open to all poor who are in need of wage employment and desire to do manual and unskilled work in and around their village/habitant and all deserving areas were required to be given a fair treatment in the matter of allocation of resources without diversion of resources among the wards of the Village Panchayat. For implementation of the schemes a total sum of Rs.64,70,000/- was sanctioned and made available to Panchayat Authorities, District Authorities and other concerned authorities in the State by the Central Government for the year 2004-05. Detailed guidelines to be followed for implementation of the schemes were also laid down.


3. According to the guidelines each Village Panchayat was required to independently prepare and approve an Annual Action Plan before the beginning of each financial year. The plan so prepared was required to be thoroughly discussed in the meeting of the Gram Sabha and after the schemes were taken up for implementation, muster rolls were required to be maintained for every work showing the details of wages paid to workers and food grains distributed and also indicating the number and details of Schedules Castes/Schedules Tribes/Women and others who have been provided employment. Such muster rolls were to be made available to public on demand.

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Payment of wages was required to be made in the shape of food grains at the rate of 5 kgs. per manday as well as in cash. The distribution of food grains to such workers should be made at the work site either through PDS or by the Village Panchayat or any other agency appointed by the State Government. A Monitoring Committee consisting of social workers, retired civil and defence or private sector officers, other retired employees like teachers, well-educated persons and an SC/ST including women's representatives was required to be constituted for monitoring the progress and quality while the work was in progress. The State Government is to ensure that the officers at the State, District, Sub-Divisional and Block levels will closely monitor all the aspects of the programme through visits to work sites in the interior areas. The officers dealing with Rural Development/SGRY at the State Headquarters were, therefore, required to visit Districts regularly and ascertain through field visits that the programme is being implemented satisfactorily and that execution of the works was in accordance with the prescribed procedures and specifications and during such visits, if any officials came across any irregularity, he or she was immediately required to bring the same to the notice of the CEO, District Panchayat and the Project Director, DRDA who would then take further appropriate action in the matter. The cash component and food grains under the scheme would be released every year directly to the District Panchayat/DRDAs on the basis of a certificate to be issued by the concerned authorities to the effect that the resources under the scheme are not diverted and there is no embezzlement of funds and that the concerned Panchyat have duly approved the Annual Action Plan. The Village Panchayat was required to maintain complete






inventory of the assets created under the programme and details of the date of completion of the projects, cost involved, benefits obtained, employment generated and other relevant particulars. Signboards would be required to be displayed near the works, giving these details. Photographic record of the works at the various stages of implementation were also required to be kept.


4. It is however alleged that none of the above guidelines were strictly followed during the implementation of the scheme by the Implementing Authorities. No Gram Sabha was ever called by the authorities in compliance with the prescribed procedures nor any discussion was held in the Gram Sabha before the schemes were approved and finalised. Schemes were prepared and sanctioned in closed door by few vested interests without calling for any Gram Sabha and without considering the actual requirement and expectations of the community at large for whose benefit the schemes were undertaken by the Central Government. There was gross discrimination in the matter of allocation of resources and routine diversion of resources. Most of the works were carried out by the Panchayat Members and/or their close relatives or for individuals of vague antecedents. . No food grains were given to the deserving workers in the manner as prescribed in the guidelines nor was this fact brought to the notice of the Central Government by implementing agencies of the State-Respondents. A request made by the Petitioners to make the copies of the muster rolls available was not even responded by the Authorities and as such the Petitioners had grave doubts as to whether the muster rolls have been maintained at all in the manner as prescribed by the same guidelines. As a result, there were glaring lapses and irregularities in






the whole process of sanctioning and implementation of the above schemes. In the process huge public money was misused and mismanaged for the benefit of all and sundry who had undue influence in the area. As a result, the very purpose for which the Government had started these schemes was frustrated and neither the community was benefited nor the objective with which the scheme was initiated was fulfilled.

5. In the joint counter-affidavit filed by the Respondent Nos.1, 3 and 4 it is not disputed that the North District of the State having been identified as one of the most backward Districts of the country was selected by the Central Government for implementation of the two schemes in question. It was also not disputed that as per the guidelines laid down for implementation of the works under SGRY scheme each Village Panchayat is to prepare an Annual Action Plan which is to be discussed in the meeting of the Gram Sabha before the implementation of the work. However, it was contended that the guidelines in this regard could not be strictly followed since the concept of holding Gram Sabha was highlighted in the State of Sikkim only after de-centralisation and devolution of powers to the Panchayati Raj Institution after the enactment of Sikkim Panchayat Act, 1993. Over and above, the Central Government introduced NFFWP scheme with effect from November, 2004 under which prospective plan was required to be drawn up by the State Government. Such prospective plan prepared and submitted by the State Government was awaiting approval of the Ministry of Rural Development, Government of India, when the schemes were taken up. Since the schemes under SGRY were time bound any delay in the implementation of the work and submission of the utilisation







report would entail cut in the subsequent allocation the schemes were sanctioned and implemented without any delay in order to ensure that the State and the public do not suffer. The detailed procedure adopted by the department during the relevant year 2004-05 for identifying, sanctioning and implementing of the works were as under:-


- a) Demands were usually made by the public either to the village representative or to the Area MLA who in turn after consultation with concerned Panchayat used to place public demand to the department;
- b) The sanctions are then accorded by the departmental depending on the availability of the resources and after preparation of the technical reports, plan and estimate;
- c) The grant of sanction of work is then intimated to the District Implementing Authority who in turn issues the work commencement order to the Technical Cell. A copy of such sanction intimation letter are also forwarded to the various other concerned authorities like Sachiva Zilla Panchayat, Area MLA, Director Vigilance, Zilla Panchayat, President, Gram Panchayat, Divisional Engineer and Assistant Engineer.
- d) Thereafter, the technical cell executes the work with active participation of the concerned Panchayat keeping in view the objective of the schemes viz. wage employment generation and creation of durable assets of community.

6. Under the procedure so adopted it was ensured that the works to be implemented and assets to be created were identified by the public and the local Panchayat themselves and after the public demand for implementation of such work through the Panchayats and the Area MLAs was received, the Department sanctions the works under intimation to the District Implementing Authority who in turn prepares technical report, plan and estimates.





7. The rest of the allegations made in the Petition have all been replied and refuted. So far as the allegations regarding diversion of resources, duplication and triplication of the works are concerned, the Respondents have categorically denied. By way of clarification the State-Respondents in paragraph 14 of the counter-affidavit have stated that the works are different and separate. It is on account of use of similar nomenclature for separate works that the separate works appear to be like one. It is stated that SIP is quite large village containing places with different names like Phensong Gumpa, ICDS Centre, Waiting Shed, Nyungnay Lhaxhang etc. It is submitted that the works CFP from SIP to Goko Tashi to Shitanglha at Phensong and the work CFP from SIP to Gogo Tashi at Phensong mentioned at Serial Nos.3 and 17 of Annexure - I are two different works carried out in the same village but in different locations. The allegation that the work mentioned at Serial Nos.4, 20, 25, 28, 48 and 62 of Annexure - I cannot be termed as durable productive community assets has been denied. It has been stated that the name of the people are used as a nomenclature/landmark only to identify and show that the work has been executed in that particular area. The work undertaken is meant for general public and accordingly the public of the village is availing of the facilities so created. Similarly, the allegation that the works listed at Serial Nos.2, 9, 29, 31, 33 and 60 of Annexure - I and II are the works that were already completed earlier have also been denied. So far as the allegation regarding the non-completion of the work is concerned, it has been asserted that all the works have been completed and there is no substance in the allegation. As regards the allegation that the works were carried out by the Panchayat members it was stated that






the works were implemented by engaging the local rural people. The allegation regarding the non-maintenance of muster roll in connection with the work have been categorically denied. It is submitted that muster roll of all the schemes that have been implemented are maintained in the respective Districts in conformity with the guidelines. The allegation that no food grains were given to the deserving in the manner as prescribed by the guidelines of SGRY and NFFWP are also denied. It is stated that the payment of wages have been strictly made in accordance with the guidelines. The allegation with regard to the non-maintenance of inventory of assets created under the programme has also been denied and it is stated that nomenclature of the assets created under the programme are maintained in the respective District Offices. The signboards of completed schemes have also been displayed at the work site for the information of the people. As regards the allegation contained in para 12.9 relating to constitution of Vigilance Committee, it has been stated that the Social Audit and Vigilance Committee has already been formed vide Notification No.35(93)05-06/RMDD/P/29 dated 1/9/05 (Annexure - R6). The allegations contained in paragraph 12(ii) are also denied stating that the requisite documents mentioned in the said para are submitted by the Government of Sikkim for release of subsequent instalment.

It was accordingly contended that even though there was no strict compliance of the guidelines in letter and spirit, the schemes were implemented strictly in accordance with the objectives to be achieved by engaging local people of that area.


8. Mr. M. Z. Ahmed, senior counsel assisted by Ms. B. Dutta, learned counsel appearing for the Petitioners, Mr. Karma


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Thinlay, Central Government Standing counsel for the Respondent No.1 and Mr. S. P. Wangdi, Advocate General for the State-Respondents were heard. While Mr. K. T. Bhutia, learned counsel appearing for the Respondent No.13 adopted the arguments submitted by Mr. S. P. Wangdi, learned Advocate General, none appeared for Respondent Nos.7 to 12 on the day of final hearing.

9. In his submissions, Mr. M. Z. Ahmed, learned senior counsel appearing on behalf of the Petitioners submitted that there was indiscriminate violation of different guidelines laid down by the Government for implementation of the schemes. According to him these guidelines which had the force of law could not have been departed from or violated in the manner it was done. Over and above, there was deviation, duplication and non-completion of the works undertaken by the department. These violations and departures which were fully borne out by the materials placed by the Petitioners on record were sufficient to make out a case for investigation by the Special Agency and as such an investigation by such Agency was called for in public interest. Per contra, the learned Advocate General, appearing on behalf of the State-Respondents, submitted that even though some of the guidelines were not strictly adhered to in view of the peculiar facts and circumstances prevailing in the State of Sikkim, the schemes were implemented strictly so as to ensure that the objectives with which the schemes in question were implemented were achieved. It was his further contention that the guidelines of which violation has been alleged being non-statutory no Writ would lie for enforcement of the guidelines. It was also contended that the allegations relating to the liability of individuals for the alleged mismanagement or misuse of funds were







vague and also bad for non-joinder of necessary parties. According to him, the allegations were absolutely based on presumptions and assumptions in so far as the Writ Petition does not contain any material particulars of the individuals who are alleged to have committed criminal acts by violating the guidelines. Further, it was submitted that the Writ Petition was liable to be dismissed on the sole ground that the Petitioners suppressed material facts in so far as they had not disclosed in the Writ Petition that they belong to a political party.

10. The question that falls for consideration is whether the guidelines laid down for implementation of the schemes in question have been indiscriminately violated as alleged and if so whether a writ would lie to enforce the guidelines. Further question that also falls for consideration is whether an enquiry by a Special Agency can be ordered in the facts circumstances of the case.


11. As can be noticed from the narration of pleadings given above, the allegations made in the Writ Petition relating to departure from the guidelines with regard to the proposal being initiated at the level of Gram Sabha have been admitted but duly giving reasons for such departure. The allegations regarding duplication, deviation of work or diversion of the resources have been categorically denied with explanations. Even though the Petitioners have strongly disputed that these clarifications are satisfactory as claimed by the Respondents, we find that the clarifications are duly supported by approved site plans and sketch maps. In view of this, the clarifications given in support of the denial of these allegations and also other allegations cannot, in our view, be lightly brushed aside as entirely unsatisfactory. Thus, even though non-adherence to the





guidelines is admitted in part, the materials placed on the record by the State-Respondents certainly go to show that the non-adherence to the guidelines, even if any, is not to the extent as sought to be made out by the Petitioners. Some deviations from the guideline had to be resorted to keeping in view the peculiar situation of the State. In view of this, the pertinent question that arises as noted above is whether for such non-adherence to the guidelines which are admittedly non-statutory a writ would lie to enforce the same.

12. The submission urged by the learned Advocate General in this regard relying on the decisions of the Apex Court in ***State of Assam and Another vs. Ajit Kumar Sarma and Others*** reported in ***AIR 1965 SC 1196*** and in ***G. J. Fernandez vs. State of Mysore and Others*** reported in ***AIR 1967 SC 1753*** is that the violations complained of being violation of mere guidelines which are non-statutory in nature no Writ lies to enforce the same. That the above two decisions lay down that administrative instructions without any statutory force cannot be enforced is not disputed. Thus, without disputing that it is a settled law that no Writ lies to enforce administrative instructions which lack any statutory force the contention of Mr. Ahmed is that the Central Government had prepared the schemes in question and had sanctioned public revenue for specific purposes and it was incumbent upon the State-Respondents to ensure transparency and act in accordance with the guidelines to ensure that in the matter of distribution of public largesse there is no arbitrariness, discrimination and/or *mala fide* intents. Hence it is his submission that the guidelines in question must be taken to have the force of law. In support of his contention that administrative instructions/guidelines cannot be brushed aside




as having no force of law the learned counsel relied on the following three decisions:-

1. ***Union of India vs. K. P. Joseph and Others*** reported in ***AIR 1973 SC 303***;
2. ***E. Venkateswararao Naidu vs. Union of India*** reported in ***AIR 1973 SC 698***; and
3. ***Dr. Satyabrata Dutta Choudhury and Another vs. State of Assam and Others*** reported in ***AIR 1976 SC 487***

A perusal of the above decisions certainly go to show that mandamus can be issued to enforce a non-statutory administrative orders in certain cases. It must, however, be noted that all the above cited cases relate to such service matters which fall within the exceptions carved out to the general principle that no mandamus will issue to enforce mere administrative instructions. However, it has not been shown that the present case falls within any of such exceptions. As such, the contention put forward by Mr. Ahmed cannot be accepted. Accordingly it follows that no Writ would lie to enforce the guidelines in question.


13. The second leg of argument advanced by Mr. Ahmed is that several persons have committed criminal acts in the course of the alleged violation of the guidelines and rules for which a detailed enquiry by Special Agency is called for and in the circumstances this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution can issue necessary direction to the Central Bureau of Investigation to conduct an investigation into the matter under the supervision of this Court and submit a report for further action in the matter.

14. The submission made by the learned Advocate General in this regard is that the Writ Petition contains no material particulars



of the persons who are alleged to have violated the guidelines in so far as the Writ Petition is based on doubts, apprehensions, presumptions and surmises. Indeed, it is his submission that the Petitioner No.1 has filed an application dated 12th April, 2006 (Annexure - 5) addressed to the Public Information Officer, RMDD under the Right to Information Act, 2005 seeking information relating to SGRY and NFFWP schemes after this Writ Petition was filed and as such, the Writ Petition being pre-mature is liable to be dismissed. Even though it has been denied that this application dated 12th April, 2000 can be made a basis for declaring the Writ Petition as pre-mature and for dismissing the same, it appears from the averments made in paragraph 12(vi) of the Writ Petition that certain information sought for by the Petitioners regarding maintenance of muster roll while executing the work before filing the Writ Petition was not admittedly made available to the Petitioners. Mr. Ahmed very fairly conceded that since relevant information sought for by the Petitioners under the Right to Information Act was not furnished to them by the concerned authority, the Writ Petitioners had no option but to come forward with the present Writ on the basis of materials that were available with them. According to the learned counsel it is for this reason that directions for necessary enquiry has been sought for so that further relevant materials come to light for further needful actions in the matter.

15. It is thus the admitted position that so far as the allegations relating to commission of irregularities or illegalities amounting to criminal act is concerned the Writ Petition admittedly lacks relevant and requisite particulars. Therefore, the question that falls for consideration is whether the Writ Petitioners in a Public



Interest Litigation can come with half-baked information and seek the assistance of the Court to get further information for initiating any action. It appears that any answer to this question has to be in the negative in so far as the law laid down by the Apex Court in catena of decisions is that no action can be taken on insufficient materials.

16. It has been held by the Apex Court in ***S. P. Anand vs. H. D. Deve Gowda and Others*** reported in **(1996) 6 SCC 734** that a persons seeking to espouse a public cause, owes it to the public as well as to the Court that he does not rush to the Court without undertaking a research, even if he is qualified or competent to raise the issue. The relevant observation made by the Court in this regard occurring in paragraph 18 of the judgment is as follows:-

“18. It is of utmost importance that those who invoke this Court’s jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights.”

[emphasis supplied]

17. In ***Netai Bag and Others vs. State of W.B. and Others*** reported in **(2000) 8 SCC 262**, the Apex Court has observed as follows:-

“19. Though the State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action, initial burden of showing the prima facie existence of violation of the mandate of the Constitution lies upon the person approaching the court.

.....”

[emphasis supplied]

In the same paragraph, it has also been observed that the Constitutional Courts cannot be expected to presume the alleged irregularities, illegalities or unconstitutionality nor the Courts can substitute their opinion for the *bona fide* opinion of the State executive.

18. Further, in ***Sachidanand Pandey and Another vs. State of West Bengal and Others*** reported in **(1987) 2 SCC 295**, the Apex Court laying down the guidelines as to when Courts can entertain Petition in the nature of public interest has observed as follows:-

"61. It is only when courts are apprised of gross violation of fundamental rights by a group or class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, specially this Court, should leave aside the procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected."

[emphasis supplied]

19. As already noted above, it has been very fairly conceded by the learned counsel for the Petitioners themselves that the Petitioners were not able to collect full particulars in this regard as they failed to receive any response to the application filed by them under the Right to Information Act. Therefore, admittedly the allegations are not backed by sufficient particulars so as to show who are the individuals responsible for such illegalities or irregularities and as such, the submission advanced by the learned Advocate General that the allegations are based on incomplete materials as well as on assumptions and surmises cannot be brushed aside. It is a settled law that no roving enquiry is contemplated in such matters [vide

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Guruvayoor Devaswom Managing Committee and Another vs. C. K. Rajan and Others reported in **(2003) 7 SCC 546**].

The following observation made by the Apex Court in paragraph 16 of the judgment in ***State of Karnataka vs. Arun Kumar Agarwal and Others*** reported in **(2000) 1 SCC 210** makes the point further clear:-

"16. The acts of persons will not be the subject of criminal investigation unless a crime is reported to have been committed or reasonable suspicion thereto arises. On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known, the persons involved in it or the place of crime unknown, cannot be termed to be a reasonable basis at all for starting a criminal investigation. However, condemnable be the nature or extent of corruption in the country, not all acts could be said to fall in that category."

[emphasis supplied]

Expressing the view that the High Court ought not to have directed the State Government to get an investigation done through CBI in the case, the Court further observed: -

".....The attempt made by the High Court in this case appears to us to be in the nature of a blind shot fired in the dark without even knowing whether there is a prey at all. That may create sound and fury but not result in hunting down the prey."

20. It is thus clear that no investigation by any Special Agency can be ordered where the facts brought on record give rise to mere suspicion and neither specific crime nor person involved in the crime nor place of crime is known.

Further, specific grievance of the petitioners in this regard is that, the residents of the village Rongong, North Sikkim being aggrieved by the manner in which no developmental activities had taken place in their village, held a meeting on 20th March, 2005 and adopted a resolution authorising a Club, namely, Rongong Youth Club a registered non-political, non-sectarian and a secular organization to



take appropriate legal steps for the redressal of their grievances. Pursuant to this resolution, the two Petitioners herein along with several others including some members of the above Club jointly addressed a Complaint Petition dated 9th November, 2005 to the Deputy Developmental Officer, North District, Mangan, North Sikkim (Respondent No.4) through Registered Post for taking needful action in the matter. Copies of the representation were also forwarded to the Director, Vigilance Department, Government of Sikkim (Respondent No.5) and the CBI, Special Police Establishment, CGO Complex, Lodhi Road, New Delhi - 110 003 through its Director, Gangtok, East Sikkim (Respondent No.6). However, neither the Respondent No.4 to whom the representation was addressed nor the Respondent Nos.5 and 6 to whom copies of the representation were forwarded, took any action in the matter. It is the submission of Mr. Ahmed that the Respondent Nos. 5 and 6 ought to have treated the copies of the representation addressed to them as FIR and ought to have taken action in the matter according to law. It is thus the admitted case of the Petitioners that they have not lodged any formal FIR with the concerned authorities in the matter.

The above apart, the further relevant question is, even if the Petitioners had lodged a formal FIR with the concerned authorities and the concerned authorities had failed to take any action in the matter on the basis of such FIR, whether a writ would lie for a direction to the investigating agencies to take up an investigation. It appears to us that no writ would lie in such matters, particularly in view of the specific provisions contained in Cr.P.C. in this regard. It has been clearly laid down by the Apex Court in the recent case of ***Divine Retreat Centre vs. State of Kerala and Others*** reported in

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2008 AIR SCW 1793 that even in cases where no action is taken by the police on the information given to them, the informant's remedy lies under Sections 190, 200 Cr.P.C., but a Writ Petition in such a case is not to be entertained.

21. The following are some of the other decisions that can be referred to on the point.

In ***Hari Singh vs. State of U.P.*** reported in **(2006) Cri.L.J. 3283** it has been laid down by the Hon'ble Supreme Court that where alternative remedy is available for approaching other authorities for taking action, Writ Petitions under Article 226 or a Petition under Section 482 Cr.P.C. should not be entertained. It has been held that a Writ Petition by the complainant for direction to the CBI to investigate any such matter is not tenable in all cases where the police fail to investigate the matter when an FIR is filed. The complainant in such cases can make a complaint before the Magistrate. The observation of the Court occurring at paragraph 4 of the judgment is as follows: -

"4. When the information is laid with the police, but no action in that behalf is taken, the complainant can under Section 190 read with Section 200 of the Code lay the complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into offence under Chapter XII of the Code and to submit a report."

22. Indicating the correct position of law in such matters, the Apex Court in ***Aleque Padamsee and Others vs. Union of India and Others*** reported in **(2007) 6 SCC 171** has laid down as follows: -




"7. The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to their notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in Section 190 read with Section 200 of the Code."

23. Dealing with the similar issues the Hon'ble Supreme Court in ***Sakiri Vasu vs. State of U.P.*** reported in **2008 AIR SCW 309** has observed that no one can insist that an offence be investigated by a particular agency. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no right to claim that it be investigated by any particular agency of his choice. Elaborating on the point, the Court in paragraph 11 has observed as follows: -

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154, Cr.P.C., then he can approach the Superintendent of Police under Section 154(3), Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned."


Giving reasons for such elaboration, the Apex Court in paragraph 25 has further observed as follows: -

"25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a Writ Petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternative remedy, firstly under Section 154(3) and Section 36, Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3)." [emphasis supplied]



24. The above authoritative pronouncements make it amply clear that an enquiry cannot be ordered in each and every case merely for the asking and where there is an alternative remedy, the High Court should not interfere even when alternative remedy is no bar to a Writ Petition. Thus, it must be taken as fairly well-settled position in law that a CBI enquiry cannot be ordered as a matter of routine merely because the party makes some allegations. It thus follows that directions for such investigation should be issued only in some rare and exceptional cases. However, the present case does not fall within the category of such rare and exceptional cases so as to justify investigation by Special Agency. In this regard, it is pertinent to take note of the evident fact that none of the beneficiaries approached any authority with any grievance much less lodge an FIR with the police. However, in view of the legal position highlighted above, it must further be noted that even if a formal FIR had been lodged and the concerned authorities had failed to take any action no case would be made out for any enquiry by Special Agency in the present case.

25. We may now take up the issue relating to the credentials of the Writ Petitioners. It may be recalled that the two Petitioners herein claim themselves to be social workers holding respectable positions in the society and genuinely concerned with the issues of corruption, management and misuse of public money. They have thus come forward with the present Petition seeking appropriate directions to the Respondent Nos.5 and 6 to investigate into the matter under the supervision of this Court in order to protect the welfare schemes in question from being hijacked from the implementing agencies at the behest of vested elements and in order





to weed out corruption in the overall interest of the residents of the State. Dealing with these points in the preliminary objections the State-Respondents have contended that the Petitioners are not the public spirited persons as claimed in the Writ Petition and have filed this Writ Petition in the form of Public Interest Litigation with the *mala fide* intention and for oblique purpose for gaining political mileage. It is stated that the Petitioners while filing the Writ Petition have concealed their true identity and their background. According to the State-Respondents both the Writ Petitioners are the members of the Sikkim Pradesh Congress Committee, a political party opposed to the present party in power but the Petitioners in the Writ Petition have concealed these facts and as such, the Writ is liable to be dismissed at the threshold for concealment and suppression of material facts.

26. Even though it was conceded that the Writ Petitioners have not made any mention about their affiliation to the Congress Party in the Writ Petition at the initial stage, Mr. Ahmed has contended that at the same time the Writ Petitioners have subsequently conceded to this position in their additional affidavit. It was then submitted that it was not the requirement of a writ law that if a Petitioner belongs to a political party he must declare the said fact in the Writ Petition at the threshold nor is it the law that Writ Petition is liable to be thrown out merely for the reasons that the Petitioners belongs to an opposing political party. Referring to and relying on the decisions of the Gauhati High Court rendered in ***Sarat Chandra Sinha and Others vs. State of Assam and Others*** reported in ***AIR 2006 Gauhati 4*** and of the Apex Court in ***K. Anbazhagan vs. Superintendent of Police and Others*** reported in

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(2004) 3 SCC 767 the learned counsel submitted that the mere fact that the Petitioner is affiliated to a political party does not disqualify him from bringing writ in the nature of public interest.

27. Dealing with the issue, the Gauhati High Court in para 15 of the judgment in the case cited above observed as follows:-

"15. It is true that two of the petitioners are actively connected with politics but this cannot be a ground for throwing out this PIL at the threshold. In the public interest litigation, the most significant aspect is public interest. Once it is shown that public interest is involved, the Court has to intervene."

28. While rejecting the submission that the Writ Petition needs to be thrown out as the Petition has been launched out of political vendetta by the Petitioner who is the political opponent of Respondent No.2 the Apex Court in the above **K. Anbazhagan** case observed as follows:-

"13. In a democracy, the political opponents play an important role both inside and outside the House. They are the watchdogs of the Government in power. It will be their effective weapon to counter the misdeeds and mischiefs of the Government in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected. In that view of the matter, being a political opponent, the petitioner is a vitally interested party in the running of the Government or in the administration of criminal justice in the State. The petition lodged by such persons cannot be brushed aside on the allegation of a political vendetta, if otherwise, it is genuine and raises a reasonable apprehension of likelihood of bias in the dispensation of criminal justice system." [emphasis supplied]

29. The above being the position in law it must be conceded that Mr. Ahmed is well supported by the ratio laid down in the two cases relied upon by him in so far as the decisions lay down that a petition cannot be brushed aside on the mere ground that it is motivated by political vendetta. However, the condition as specified



by the Apex Court in the above judgment is that such Petition should be genuine and must raise reasonable apprehension. The legal position being as stated above, the only contention urged by the learned Advocate General appearing on behalf of the State-Respondents is that the present Petition cannot be taken as genuine one because of the fact that the Petitioners have disclosed their true identity only after the Respondents had pointed out in their counter-affidavit. As already noted above, the fact that Petitioners were members of Sikkim Pradesh Congress Committee, a political party opposed to the party in power does not find place in the Writ Petition when it was initially filed. Admittedly, it came on record only after the State-Respondents raised this point in their counter-affidavit. The question is whether non-disclosure of the identity at the very initial stage is of any consequence with regard to the *bona fides* of the Petitioners. In this regard, it may be noted that the requirement of *bona fides* in case of a Writ Petition filed as Public Interest Litigation stands on a slightly different footing from the Petitioner in the other Writ Petitions. This becomes clear from the following observations made by the Apex Court in ***K. R. Srinivas vs. R. M. Premchand and Others*** reported in **(1994) 6 SCC 620:-**

"7. a writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but must further come with a clean heart, clean mind and clean objective.**"**

30. The following observation made by the Andhra Pradesh High Court in ***B. Kistaiah vs. Government of India*** reported in **1998 (4) ALT 738** with which we are in agreement throws sufficient light on the point.

"35. The petitioners in public interest litigation are bound to disclose their particulars, details

about their avocation and the effort made and methods adopted by them in obtaining and collecting the data and information for filing the public interest litigation. Credibility of the persons initiating public interest litigation is an important aspect which requires the attention of the Court at the threshold otherwise the unscrupulous litigants would hijack the system and use it as an instrument of blackmail.”

The following further observation made by the Court on the point in the same paragraph is also relevant.

“ Liberalising the Rule relating to standing is no licence granted to one and all for filing cases of their choice in the name of public interest litigation. Relaxation is meant to seek Judicial redress by public-spirited citizens on behalf of marginalized, poor, weaker sections of the society. Public interest litigation cases initiated by social and democratic organisations, academicians, social scientists, human rights activists gained a growing acceptance and judiciary recognised them as representatives espousing the cause of community's interest.”

31. According to the specific observation made by the Apex Court in ***Ashok Kumar Pandey vs. State of West Bengal*** reported in **2003 (9) Scale 741** a Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. Laying down certain conditions on which the Court has to satisfy itself the Court in para 14 of the judgment observed:-

“The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of the information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved.”

32. Keeping in view the above requirement regarding *bona fides* of a Petitioner in Public Interest Litigation, it cannot be said that the Petitioners in the present case fully satisfy the above conditions.

That this is so also becomes clear from what was brought on record by this Court on 24th May, 2007 in course of the proceedings. The relevant part of the order reads as follows:-


"It is recorded that the Writ Petitioner No.1 Gayching Bhutia, who is present in Court states that he is a member of the Congress (I) Party. Although he stated at first that he has no political affiliation, when the Court desired to record so, he said that he is a member of the Congress (I) Party. The Petitioner No.2 Ugyen Nedup Bhutia, who is also present in Court states that he is also a member of the Congress (I) Party."

33. The hesitation or the reluctance with which the Petitioners have admitted their affiliation to a political party at a later stage that too on being pointed out in the counter-affidavit as can be noticed from above makes it doubtful that they have come before the Court with clean heart, clean mind and clean objectives.

According to the observation made by the Apex Court in **S. P. Anand** case (supra) the pre-requisites of clean heart, clean mind and clean objective over and above clean hands are essential in order to be able to ascertain and to be satisfied that the carriage of proceedings is in the competent hand of a person who is genuinely concerned in public interest. The following is the relevant observation made by the Court in this regard:-

"18. Lastly, it must also be borne in mind that no one has right to the waiver of the locus standi rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations." [emphasis supplied]

To conclude, it is appropriate to notice the following observation made by the Apex Court in **T. N. Godavarman Thirumulpad (98) vs. Union of India and Others** reported in **(2006) 5 SCC 28:-**




"23. Howsoever genuine a cause brought before a court by a public interest litigant may be, the court has to decline its examination at the behest of a person who, in fact, is not a public interest litigant and whose *bona fides* and credentials are in doubt."

[emphasis supplied]

In view of the above, it becomes obvious that the Writ Petitioners do not satisfy all the requisite conditions to espouse the cause of public interest.

34. Hence on a consideration of the facts and circumstances of the present case in the light of the law as highlighted above, we are of the view that the Writ Petition is devoid of merits and deserves to be dismissed.

35. Accordingly, the Writ Petition is hereby dismissed without any order as to cost.


(Justice A. P. Subba)
Judge
29.04.2008