

Serial No. of Order	Date of Order	Order with Signature	Office Note action (if taken on O
18.	5.12.2006	<p style="text-align: center;"><u>ORDER</u></p> <p>I have brought up these two Cases which were heard together under the heading - "To be Mentioned" of which judgment was reserved on November 22, 2006 after hearing the learned Counsel of all parties.</p> <p>[2] The Writ Petitioner Vinod Kumar Sinha filed recast Writ Petition for, inter alia, setting aside the following Cabinet decision dated 16.02.2005 : -</p> <p>(i) approving cancellation of list of 40 Lecturers recommended by the Public Service Commission for appointment which included his name for appointment in the Sikkim Government College;</p> <p>(ii) to continue with ad-hoc appointment of Lecturers; and</p> <p>(iii) to regularize the services of Lecturers already working on ad-hoc basis in the next Financial Year.</p> <p>[3] On 01.04.2006 Counter Affidavit was filed on behalf of Respondent Nos.1 to 3 (State and Authorities).</p> <p>[4] Separate Counter Affidavits were also filed on behalf of Respondent Nos. 6, 7 and 8.</p> <p>[5] The Petitioner filed Rejoinder to the Counter Affidavit of Respondent Nos.1 to 3 on 19.04.2006.</p> <p>[6] "Synopsis of Arguments" and "List of Dates" (? A chart showing non-denials in the Counter Affidavits of the Statements made in the</p>	





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		<p>Writ Petition) filed by the learned Counsel for the Petitioner, are on the record. The learned Counsel for the Petitioner concluded his opening arguments on 04.05.2006.</p> <p>[6.1] The learned Government Advocate submitted his reply during which he also argued that the Cabinet took decision taking in account Rule 4(4) of the Sikkim Government Establishment Rules, 1974, though without there being any pleading in the Counter Affidavit.</p> <p>[6.2] The learned Lawyer for the Petitioner challenged the legal existence of these Rules.</p> <p>[6.3] The learned Government Advocate replied that it was in existence at the time of merger of Sikkim with India and this question stands settled by the decision of the Apex Court in State of Sikkim Vs. Surendra Prasad Sharma, AIR 1994 SC 2342.</p> <p>[6.4] A request was made by the learned Government Advocate to enable him to show (i) the Original Rule and (ii) the Sikkim Darbar Gazette showing publication of the Rules to repel the doubt expressed.</p> <p>[6.5] The case was adjourned to 05.05.2006 for further hearing, as requested by the learned Government Advocate.</p> <p>[6.6] Copy of this order was directed to be handed over to the learned Government Advocate so that he may produce the Original Rule/Gazette</p>	

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Notification publishing the Rule in the Sikkim Darbar Gazette.

[7] On 05.05.2006, on the prayer made by the learned Government Advocate the case was adjourned to 15.05.2006 as the concerned documents could not be traced out within short time.

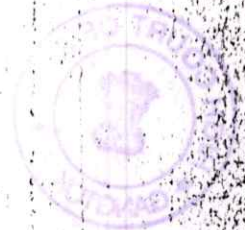
[7.1] The Court orally observed that if the Government so likes it may move the Apex Court for transfer of this Case under Article 139-A of the Constitution of India.

[8] On 24.05.2006 the learned Advocate General orally prayed for adjournment as according to him despite genuine efforts made the Proclamation and Gazette Notification in question could not be traced out as yet.

[8.1] The case was adjourned to 23.06.2006.

[9] The case was further heard on 23.06.2006. Attention of the Bench was drawn to the deposition dated 31.08.1994 of the Secretary, Department of Personnel, Administrative Reforms and Training given in C.W.P. No.13 of 1993.

[9.1] Learned Government Advocate referred to the (i) Order dated 14.07.1995 passed by the Supreme Court setting aside the order dated 24.03.1995 of the High Court in C.W.P. No.13 of 1993 allowing amendment of that Writ Petition. He also referred to again the judgment of the



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		<p>Apex Court in the State of Sikkim Vs. Surendra Prasad Sharma.</p> <p>[9.2] The Court in its Order dated 23.06.2006 after noting his submissions, and on his oral prayer, adjourned further hearing to 17.07.2006 so that he could once again search out relevant papers in the backdrop as according to him some relevant papers, were shown to him on that day by the Government Officials.</p> <p>[9.3] Liberty was granted to both sides to file further affidavits and papers in the meantime.</p> <p>[9.4] Again an oral observation was made by the Court that a prayer be made before the Apex Court for transfer of this Case to the Apex Court, in view of its sensitive nature.</p> <p>[10] The case was not listed on 17.07.2006 due to non-availability of this Bench.</p> <p>[11] On 14.08.2006 on an oral prayer for adjournment made by the Government Advocate on the ground that the documents in question could not be traced out and that the Government intends to bring on the record of this case, the copies of the Orders passed in the Case which was dealt by the Apex Court, the case was adjourned to 29.08.2006.</p> <p>[12] Again an oral prayer for adjournment was made by the learned Government Advocate on 29.08.2006, this time on the ground that the</p>	



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Government intends to go before the Apex Court against Orders dated 04.05.2006 and 23.06.2006.

[12.1] The oral prayer for adjournment was strongly opposed by the Counsel for the Petitioner.

[12.2] Case, however, was adjourned to 30.08.2006 awaiting filing of a written application justifying grant of adjournment.

[13] On 30.08.2006 C.M.A. No.107 of 2006 was filed by Respondent Nos.1 to 3.

[13.1] The Case was adjourned to 31.08.2006 giving liberty to the Petitioner to file Rejoinder to C.M.A.

[13.2] On 31.08.2006 Case could not be listed because of non-availability of the Bench. Counter Affidavit was filed by the Petitioner of W.P. (C) No.44 of 2005 to the C.M.A. pointing out, inter alia, in Paragraph 8 of his views in relation to the defence orally taken in relation to applicability of 1974 Rules which do not exist as law.

[14] The State filed SLP (Civil) No._____ of 2006 in the Supreme Court on 23.09.2006.

[15] As the Bench became available the case was listed on 22.11.2006.

[15.1] The learned Government Advocate again prayed for adjournment, this time on the ground that SLP has been filed, which is yet to be listed.

[15.2] The prayer for adjournment was not allowed by the Court and C.M.A. No.107 of 2006 was dismissed by passing a reasoned order.



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		<p>[15.3] Later on all three Learned Advocates were heard and judgment was reserved.</p> <p>[15.4] On the request of the Government Advocate, however, one week time was granted to intimate in writing as to whether the Government is prepared to reconsider the prayer of the Petitioner for his appointment.</p> <p>[16] Following questions cropped up for adjudication: -</p> <p>(i) Whether in the facts and circumstances the prayer of the Petitioner to quash impugned Cabinet decision should be allowed?</p> <p>(ii) Whether the Government Advocate could take orally a defence in relation to existence of Sikkim Government Establishment Rules, 1974 and it should be entertained?</p> <p>(iii) Whether in view of the Judgment of the Apex Court holding the Rules as intravires this Court has jurisdiction to consider the very legal existence of the 1974 Rules, which was not approved by the Chogyal or published in the Sikkim Darbar Gazette?</p> <p>(iv) Whether the Court should adjudicate its legal existence?</p> <p>(v) Whether the Petitioner is entitled to the reliefs claimed for?</p> <p>[17] No statement in writing was made by the State Government in terms of the Order dated November 22, 2006 till November 29, 2006. However, on November 30, 2006 in Office a 430 pages Affidavit was filed on behalf of Respondent</p>	



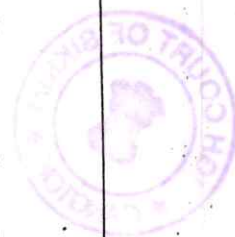
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	<p>Nos.1, 2 & 3, along with a prayer for condonation of delay of 1 (one) day's occurred in its filing.</p> <p>[18] In the Affidavit it has been clearly admitted by Respondent Nos.1, 2 & 3 that the Sikkim Government Establishment Rules, 1974 was not in the form of Proclamation/Order of the Chogyal but it was Shri B. S. Das, Chief Executive, who had constituted a Committee comprising Secretary, Establishment and O.S.D. (East) for revising and framing Rules which were out of date to submit its report by 15.08.1973 and accordingly, Rules were framed and a consolidated Manual containing Services Rules were approved on 14.02.1974 by the Chief Executive; that cyclostyled copy of the Rules were prepared for distribution and the Manager, Sikkim Government Press was requested to print and supply 500 copies of those Rules; the Sikkim Government Press printed cyclostyled copies in 1974 and the Rules were brought into effect, implemented and acted upon effectively after its framing and circulation which will be apparent from various Notifications as contained in Annexures R-14 to 21, all prior to the appointed day, i.e. 26th April, 1975. A stand has been taken that the merger of Sikkim with India was also not signed by the Chogyal.</p> <p>[19] Further hearing of this case is required in the interest of justice for the following reasons: -</p>	



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		<p>(i) Opportunity has to be given to the Petitioner, if this Affidavit is taken on record.</p> <p>(ii) <u>Annexure R-8</u> to the Affidavit dated 30.11.2006 of Respondent Nos.1, 2 & 3 shows, inter alia, as follows: -</p> <p>In response to the Letter dated 24.02.2004 of the Joint Secretary, Department of Personnel, Administrative Reforms & Training, Government of Sikkim, Mr. Anil Prakash Rai, Deputy Secretary to the Government, Department of Cultural Affairs sent attested Xerox copies to the Joint Secretary, Department of Personnel, Administration Reforms & Training as available in the Sikkim State Archives.</p> <p>This document nowhere shows that it was approved either by the Chogyal or even by the Chief Executive Officer. Even it does not bear the signature of the Secretary, Establishment.</p> <p>(iii) <u>Annexure R-9</u> to this Affidavit is Xerox copy of the letter dated 13th April, 1974 from the Secretary, Establishment Department, Government of Sikkim to the Manager, Sikkim Government Press in the name of T. Chhophel, Secretary, Establishment Department, Government of Sikkim. Through this letter 64 stencils/cut paper containing Sikkim Service Rule were sent for cyclostyling 60 copies and the manner in which it has to be printed.</p>	



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		<p>This Xerox copy does not show conclusively that it bears signature of the Secretary.</p> <p>(iv) <u>Annexure R-10</u> is Xerox copy of letter dated 27th April, 1974 sent from the Secretary, Establishment Department to the Manager, Sikkim Government Press signed by someone whose name is not legible signing for T. Chhophel, Secretary, Establishment Department, Government of Sikkim sending copy of the Sikkim Government Service Rules with request to print and supply 500 copies but to show the proof copy before undertaking its final printing.</p> <p>(v) <u>Annexure R-11</u> shows issuance of Circular No.3/Establishment dated 27th April, 1974 from the Office of the Establishment Secretary, Government of Sikkim by someone whose name is not legible signing for T. Chhophel, Secretary, Establishment Department intimating availability of copies of revised Sikkim Government Service Rules etc.</p> <p>(vi) <u>Annexure R-12</u> is Xerox copy of the Sikkim Government Service Rule and amendments printed at the Sikkim Government Press in September, 1977.</p> <p>This document by itself does not show on what date it was printed etc. Surprisingly pages 52 to 62 of the document show - By Order, the name of the Secretary, Finance Department; T</p>	



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		<p>Chhophel, Secretary, Establishment Department; C. M. Rasaily, Deputy Secretary, Establishment Department. Besides it is of 1977.</p> <p>(vii) <u>Annexure R-13</u> shows Xerox copies of the Preface (at running pages 383 and 384). Its date is 1st March, 1982 thus not very relevant.</p> <p>(viii) <u>Annexure R-14</u> is Xerox copy of the Sikkim Darbar Gazette Vol. XXIV and Notification made by T. S. Gyaltzen, Chief Secretary, Government of Sikkim, dated 21st September, 1974 with reference to certain clauses of the Establishment Rules, 1974. This is relevant.</p> <p>(ix) <u>Annexures R-15 to R-21</u> are Xerox copies of a newspaper Sikkim Herald published by the Publicity Department, Government of Sikkim, the purpose of which is not clear.</p> <p>(x) <u>Annexure R-21(A)</u> is Xerox copy of the text of the Tripartite Agreement of 8th May, 1973 entered into by the Chogyal, Foreign Secretary, Government of India and Leaders of Sikkim Janta Congress, Sikkim National Congress and Sikkim National Party. Its relevancy has to be explained.</p> <p>(xi) <u>Annexure R-21(B)</u> is Xerox copy of letter dated 6th April, 1983 of N. B. Kharga, Government Advocate to the Secretary, Establishment Department, Government of Sikkim requesting to send him the original file or orders containing Sikkim Government Establishment Rules, 1974 by</p> <p>4:00 P.M. on that very day with a query if no such</p>	



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		<p>order or files are traceable whether the same was issued under the signature of the Chogyal or it is an executive or administrative order. This was required by the Government Advocate in relation to hearing of Writ Petition Nos.17 to 20 and 22 to 39 of 1982, Kamal Singh Rawat Vs. State of Sikkim & Ors. It is a relevant circumstance.</p> <p>(xii) <u>Annexure R-21(C)</u> is copy of the letter dated April 6, 1983 of T. Chhophel, Secretary, Establishment Department, Government of Sikkim to the Government Advocate intimating that the Sikkim Government Establishment Rules, 1974 were approved and issued under the Orders of the then Chief Executive, who was the Head of the Administration of Sikkim according to the Government of Sikkim Act, 1974 which were subsequently adopted under Article 309 of the Constitution of India vide Notification dated November 17, 1983.</p> <p>This letter is extremely significant inasmuch as this shows that the Rules were approved by the then Chief Executive and issued under his order. However, Order of issuance of the Rules by the Chief Executive has not been brought on the record. No approval of the Chogyal, as required under Section 29(1)(b) of the Government of Sikkim Act, 1974, has been brought on the record. Whether there was any difference of opinion</p>	



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between the Chief Executive and the Chogyal has also not been brought on the record.

(xiii) Whereas the Constitution of India was given by the People of India to themselves, the then People of Sikkim gave their verdict in the Referendum to merge Sikkim with India. Thus, a question may crop up as to how that fact can be compared to the non-approval, if any, of the Rules by the Chogyal.

[20] One of us (N. S. Singh, J.), being unwell is on leave from November 27, 2006 and likely to resume his Office from December 15, 2006.

[21] I will be on leave from December 7 to 12, 2006. The last working day of the High Court is December 20, 2006. After the High Court closes from December 21, 2006 it will reopen on February 19, 2007 but I will superannuate on December 26, 2006.

[22] Thus, hardly any time will be left for me to further hear this case, and deliver judgment on or before the last working day, i.e. December 20, 2006 of the Court.

[23] Thus, I release this case.

[24] Before parting, I put on record the following facts as well:-

(i) Non-moving the Supreme Court for transfer of this Case despite our oral observations made twice showed that Respondent Nos.1 to 3



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		<p>expressed faith in this Court. Filing of S.L.P. against the Orders of the Court cannot mean losing of faith. At this stage, the learned Advocate General, who is present in Court, and the learned Counsel for the Petitioner requests me to hear this Case but for the reasons stated earlier it is not possible.</p> <p>(ii) After the Judgment was reserved a political colour has been given in regard to the issue.</p> <p>(iii) The Administration of Justice of this Court has been scandalized. We Judges are bound to uphold the Constitution and the Laws of the Country without fear or favour, illwill or grudge as per our sacred oath which we took at the time of our appointment. It appears that those who gave political colour were not made to understand the meaning of the word '<i>prima facie</i>' in regard to non-existence of the Royal Proclamation or Order. What prevented them to exercise restraint till a judgment was pronounced, which in the event of their not liking could have been assailed before the Apex Court or to file an application for their impleadment in the case to permit them to canvass their view point and rehearing.</p> <p>(iv) During hearing we were repeatedly reminded by the learned Government Advocate that the law declared by the Apex Court is binding on us under Article 141 of the Constitution. He, or for the matter of that even others, are required to be</p>	



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reminded that the law declared by the Apex Court in Communist Part of India (M) Vs. Bharat Kumar & ors., (1998) 1 SCC 201 giving a call for the Bandh is unconstitutional. What would be the duty of the Government and its officials in that regard does not require to be mentioned.

(v) It was extremely unfortunate to doubt our intentions. The allegation that we had proceeded with pre-determined and prejudiced minds was wholly baseless and uncalled for. We would have proceeded to dictate our judgment and/or reserved our judgment on the very first day of hearing i.e. on May 4, 2006 and had not adjourned the Case on 05.05.2006, 24.05.2006, 23.06.2006, 14.08.2006, 29.08.2006, 30.08.2006. Even on last day 22.11.2006 we had granted 1 (one) week time to the State Government to submit in writing its views in regard to reconsideration of the prayer of the Petitioner.

[24.1] Sikkim is a small but beautiful State, the people of which are not only beautiful by face, but from their heart, conduct, hospitality and peaceful co-existence. It appears that some one has misled few of them about our proceedings. Alas! one could have apprised that since April 26, 1975 all are Indians and that all are governed by the Constitution, which has protected all Laws of Sikkim, which were in existence on that day.



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[24.2] What is more unfortunate that we find some Government Servants have blatantly disregarded the provision of the Sikkim Government Servants' Conduct Rules, 1974 promulgated by the Chogyal through his Order through "T. Chhophel, Secretary, Establishment Department, Government of Sikkim which was published in Sikkim Darbar Gazette, Gangtok, February 20, 1974 which is law and binding on them.

[24.3] It is important to remember that under our Constitution, as interpreted by the Apex Court, Judiciary is not only one of the three organs of the State Government, ^{but} which is also Central Pillar of our Parliamentary Democracy. This institution has to be protected at all costs.

[25] I hope that the peace and tranquility prevalent in this State will not be allowed to be disturbed.

[26] Let a copy of this order be handed over to the learned Government Advocate for its intimation to the Chief Secretary of the State.

Sd/—

(Binod Kumar Roy, C.J.)
05.12.2006

CERTIFIED TO BE TRUE COPY

Deputy Registrar (Jud.)
High Court of Sikkim
at Gangtok

