



COURT NEWSLETTER

HIGH COURT OF SIKKIM

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EDITORIAL BOARD

Hon'ble Mr. Justice P.D. Dinakaran, Chief Justice, High Court of Sikkim

Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim

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VACANCIES IN COURTS**(i) Vacancies in the High Court of Sikkim as on 30.9.2010**

Sl. No.	Name of the High Court	Sanctioned Strength	Working Strength	Vacancies
1.	Sikkim High Court	03	02	1

(ii) Vacancies in the District & Subordinate Courts as on 30.9.2010

Sl. No.	Name of the State	Sanctioned Strength	Working Strength	Vacancies
1.	SIKKIM	*15	09	06

* Including 2 Fast Track Courts.

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

(1) High Court of Sikkim from 1.7.10 to 30.9.10

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.10
	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	
1	60	14	38	36	19	7	10	16	52

(2) District & Subordinate Courts from 1.7.10 to 30.9.10 (East & North) & (South & West)

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.10
	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	
1.	309	71	90	290	886	316	295	907	1197

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.9.10
	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	
1.	92	123	88	127	37	361	362	36	163

(3) Family Court (East & North) at Gangtok from 1.7.10 to 30.9.10

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.10
	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	
1.	45	23	17	51	17	15	6	26	77

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.9.10
	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	
1.	1	0	0	1	19	14	12	21	22

(4) Family Court (South & West) at Namchi from 1.7.10 to 30.9.10

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 30.9.10
	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	
1.	14	12	5	21	7	6	4	9	30

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 30.9.10
	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10	
1.	2	0	0	2	7	4	4	7	9

(5) Lok Adalat Cases from 1.7.10 to 30.9.10

Sl. No.	Name of Lok Adalat	Opening Balance as on 1.7.10	Institution from 1.7.10 to 30.9.10	Disposal from 1.7.10 to 30.9.10	Pendency at the end of 30.9.10
1.	High Court Lok Adalat	30	5	30	5
2.	District Lok Adalat at Gangtok	2	17	3	16
3.	District Lok Adalat at Namchi	35	15	26	24
4.	Taluk Lok Adalats at Ravangla, Gyalshing, Mangan & Soreng	4	56	59	1
	Total	71	93	118	46

**SOME RECENT
HIGH COURT JUDGMENTS
OF PUBLIC IMPORTANCE**

1. **Information disclosed by the accused under Section 27 of the Evidence Act, 1872 would be relevant only to the factum of discovery and nothing more-** On 03/09/2010, a Division Bench of the Court in Criminal Appeal No. 04/2010 (Kishore Thapa Vs. State of Sikkim) has held that the scope of Section 27 of the Evidence Act requires to be considered in the light of the general provisions contained in Section 24 and the prohibitory provisions of Sections 25 and 26 thereof. Subject to the provisions contained in Sections 24, 25 and 26, information disclosed by a person under Section 27 of the Evidence Act, whether it amounts to confession or not, would be relevant only to the factum of discovery and nothing more. However, the precondition for a statement to be admissible under Section 27 is that it should have been made voluntarily bereft of threat or coercion. [Cases discussed: 1. State of Bombay Vs. Kathi Kalu Oghat, AIR 1961 SC 1808; 2. K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin, (1997) 3 SCC 721; 3. Rammi alias Rameshwar Vs. State of MP, 1999 CRI.L.J. 4561 SC; 4. Joseph S/o Kooveli Poulo Vs. State of Kerala, (2000) 5 SCC 197(205)]

2. **Infraction of provisions of Chapter XXV of the Criminal Procedure Code, 1973 results in failure of justice:** On 06/09/2010, the Division Bench in Criminal Appeal No. 2 of 2010 (Tshering Lepcha Vs. State of Sikkim) has held that Sections 328 and 329 of Cr. P. C. do not contemplate filing of an application by any party seeking for examination of the accused by a Medical Board and an obligation is cast upon the court to proceed even suo moto under Chapter XXV of the Cr. P. C., if the materials found on record show that the accused person is of unsound mind. The Court also held that in an appeal, it can exercise its power and grant appellant the benefits of Section 84 of the IPC. [Cases discussed: 1. Nivrutti Dhondiba Shinde Vs. State of Maharashtra, 1985 Cri. L. J. 449 (Bom); 2. State of Maharashtra Vs. Sindhi alias Raman, (1975) 1 SCC 647; 3. Vivian Rodrick Vs. The State of West Bengal, (1969) 3 SCC 176; 4. Dahyabhai Chhaganbhai Thakkar Vs. State of Gujarat, AIR 1964 SC 1563; 5. Dr. Jai Shanker (Lunatic) through Vijay Shanker Brother Guardian Vs. State of H.P., (1973) 3 SCC 83; 6. Navi Ahmad Khan Vs. Emperor, AIR 1932 Oudh 190]

3. **Court will not intervene the award of contract by a public authority or the state, unless there is substantial amount of public interest involved-** On 07/09/2010, a Division Bench of the Court in WP(C) No. 34/2010 (Tsewang Gyatsho Kaleon & Ors. Vs. State of Sikkim & Ors.) has held that when a writ petition is filed in the High Court challenging the award of contract by a public authority or the state, the court must be satisfied that there is substantial amount of public interest involved in entertaining such petition or that the

transaction entered into is mala fide. The Court will not intervene the award of contract where such intervention will lead to considerable delay by deciding the dispute in favour of the one or the other tenderer and would ultimately result in loss of public money. [Cases discussed- 1. Raunaq International Ltd. Vs. I.V.R. Construction Ltd, (1999) 1 SCC 492; 2. Air India Ltd. Vs. Cochin International Airport Ltd., (2002) 2 SCC 617; 3. B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd., (2006) 11 SCC 548]

4. **Amendment in the pleading is permissible after commencement of the trial, in view of proviso to Rule 17 of Order VI of CPC-** On 12/08/2010, a Single Bench of the Court in WP(C) No. 41/2009 (Dibya Prasad Pradhan & ano. Vs. State of Sikkim) has held that the proviso to Rule 17 of Order VI, C.P.C. expressly bars amendment of the pleadings after commencement of trial of the suit. But still, the bar imposed under the proviso to Rule 17 of Order VI, C.P.C. is not absolute, because, as per the said proviso itself, even after the commencement of the trial, the court may allow either of the parties to amend or alter their pleadings, if it comes to the conclusion that despite due diligence, the parties could not raise the matter before the commencement of the trial. It is in this sense, the power to amend the pleadings, is wide, and such power of the court should not be a mere hypertechnical, but should be exercised liberally. [Cases discussed : 1. Vidyabai & Ors. vs. Padmalatha & another, (2009) 2 SCC 409; 2. Rajesh Kumar Aggarwal Vs. K.K.Modi, AIR 2006 SC 1647; 3. Baldev Singh & ors. Vs Manohar Singh & another, AIR 2006 SC 2832; 4. Sushil Kumar Jain Vs. Manoj Kumar & another, AIR 2009 SC 2544; 5. State of Maharashtra Vs. Hindustan Construction Company Limited, (2010) 4 SCC 518]

5. **Sons and daughters of parents who belong to creamy layer category will continue to be included as creamy layers even after death or retirement of their parents or marriage of the sons and daughters -** On 17/09/2010, a Single Bench of the Court in WP (C) No. 16 of 2009 (Khemrraj Bhattarai Vs. State of Sikkim & Ors.) has held that sons and daughters of Class-I Officers of the rank of Joint Secretary and above in the State Government are excluded from the reservation made for OBCs and MBCs despite their marriage or despite the retirement of their parents, in view of the Notification dated 05-12-2003 issued by the government of Sikkim, notifying the guidelines to exclude the socially advanced persons/sections(creamy layer) from the reservation for MBC and OBC in the State of Sikkim. The Court further held that the Authority that issues the OBC and MBC certificates also has the authority to cancel the certificates after giving opportunity of hearing. [Cases discussed: 1. Indian National Congress (I) Vs. Institute of Social Welfare & Ors., (2002) 5

SCC 685; 2.State of Tamil Nadu & Ors. Vs. A. Guruswamy, (1997) 3 SCC 542; 3. Indra Sawhney Vs. Union of India, AIR 1993 SC 477; 4. Ashoka Kumar Thakur Vs. State of Bihar & Ors., AIR 1996 SC 75; 5. Indra Sawhney Vs. Union of India & Ors. (2nd case), (2000) 1 SCC 168; 6. Ashoka Kumar Thakur Vs. Union of India & Ors., (200) 6 SCC 1; 7. Kumari Madhuri Patil & another Vs. Addl. Commissioner, Tribal Development & others, (1994) 6 SCC 241; 8. Superintendent of Post Office & others Vs. R. Valasina Babu, (2007) 2 SCC 335; 9. Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir & others, (2008) 13 SCC 170]

6. **An employee working on contract basis cannot claim for regularization as of right, when he had entered into the Agreement of Appointment to that effect-** On 17/08/2010, a Single Bench of the Court in WP(C) No. 09/2010 (Ashish Kumar Jha Vs. State of Sikkim & Ors.) has held that since the petitioner has himself entered into the Agreement of Appointment dated 27/07/1999 in the Health Care & Family Welfare Department, Government of Sikkim in the post of X-Ray Technician on contract basis, clause (g) whereof provided that his employment on contract basis shall not entitle him for regularization in the said post as of right, as such, the petitioner cannot claim for regularization in the said post as of right. However, the Court permitted the petitioner to seek appropriate relief before the competent authority if so advised, while observing that under any event, it will not be a matter of right. [Cases discussed : 1. Gujarat Agricultural University Vs. Rathod Labhu Bechar, (2001) 3 SCC 574; 2. Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors., (2006) 4 SCC 1; 3. UP State Electricity Board Vs. Pooran Chandra Pandey & Ors., (2007) 11 SCC 92]

7. **Service rendered by the service provider for promotion or marketing of the game of chance organised, promoted or conducted by its client is a taxable service-** On 30/07/2010, a Single Bench of the Court in WP(C) No. 21/2009 (M/s. Tashi Delek Gaming Solutions Pvt. Ltd. & Ano. Vs. Union of India & Ors.) has held that service rendered by the petitioner in relation to promotion or marketing of the game of chance organised, promoted or conducted by the client, i.e. the State Government falls under the category of "Business Auxiliary Service" and as such, is a taxable service in terms of clause (zzb) of sub-Section (105) of Section 65 of the Finance Act, 1994, although the client is not itself rendering any service by organising, promoting or conducting the game of chance. The Court further held that by purchasing the tickets at the rate of 0.70 paise per piece from the client and selling the same at the rate of Rs. 1/- each to the ultimate customers, the

petitioner makes value addition to the activity of organizing, conducting or promoting games of chance as that of lottery by the State Government by providing marketing and promotional service thereto by its activities and as such, is liable to pay service tax. [Cases discussed: 1. Sunrise Associates Vs. Government of NCT of Delhi, (2006) 5 SCC 603; Union of India & others Vs. Martin Lottery Agencies Ltd., (2009) 12 SCC 209; 3. B.R. Enterprise Vs. State of U.P. & others, (1999) 9 SCC 700; 4. All India Fedn. Of Tax Practitioners Vs. Union of India, 2007 (7) STR 625 (SC)].

8. **Possession of articles of a banned terrorist organization and explosive substances attracts penalty under the Prevention of Terrorism Act, 2002 as well as the Explosive Substances Act, 1908**- On 29/07/2010, a Single Bench of the Court in CrI. Appeal No. 11 of 2008 (Dhirendra Bodo vs. State of Sikkim) has held that since the accused/appellant was found in possession of letter heads of a banned terrorist organization (National Democratic Front of Bodoland) which has been declared unlawful by the Government of India by issuing a notification under Section 3 of the Unlawful Activities (Prevention) Act, 1967, the same resulted in commission of offences punishable under Section 20(1) of the Prevention of Terrorism Act 2002. Further, possession of two hand grenades attracted the provision of Section 5 of the Explosive Substances Act, 1908. The Court further held that consent to proceed with the trial of offence punishable under the Explosive Substances Act, 1908 given by the State Government cannot be challenged on the ground that the same was required to be given by the District Magistrate under Section 7 of the Act, as the function to be discharged by an inferior authority can always be discharged by its superior authority.

MAJOR DEVELOPMENTS & EVENTS

FAREWELL DINNER HOSTED IN HONOUR OF HON'BLE MR. JUSTICE BARIN GHOSH, CHIEF JUSTICE

August 5, 2010



On August 5, 2010 a Dinner was hosted in the High Court Banquet Hall to bid farewell to Hon'ble Mr. Justice Barin Ghosh, Chief Justice, High Court of Sikkim who has been transferred to the Uttarakhand High Court.

Present on the occasion were Judicial Officers, Additional Advocate General, Members of the Bar, Officers and staff of the Registry of the High Court and Sikkim State Legal Services Authority.

SWEARING IN CEREMONY OF THE CHIEF JUSTICE OF THE HIGH COURT OF SIKKIM

August 9, 2010



Hon'ble Mr. Justice P.D. Dinakaran was sworn in as the Chief Justice of the High Court of Sikkim on August 9, 2010. His Lordship was transferred from the Karnataka High Court.

The Oath of Office was administered by His Excellency, the Governor of Sikkim Shri B.P. Singh at "Ashirwad Hall", Raj Bhawan, Gangtok. Present on the occasion were Hon'ble Chief Minister of Sikkim, Hon'ble Speaker, Cabinet Ministers, Hon'ble Judge of the High Court of Sikkim, Chief Secretary, Government of Sikkim, Advocate General, Judicial Officers, Additional Advocate General, Heads & Senior Officers of the State Departments, Officers of the High Court Registry, Media Persons and other esteemed guests.

**WELCOME DINNER HOSTED IN HONOUR OF
THE HON'BLE CHIEF JUSTICE**

August 10, 2010

On 10.08.2010, a Welcome Dinner was hosted in honour of the Hon'ble Chief Justice, Mr. Justice P.D. Dinakaran & Dr.(Mrs.) K.M. Vinodhini Dinakaran (spouse of the Hon'ble Chief Justice) in the Banquet Hall of the High Court premises.

Mr. Tashi Wangdi, Registrar General, High Court of Sikkim delivered the Welcome Address on behalf of the High Court Registry.

Thereafter, Hon'ble Mr. Justice S.P. Wangdi gave a brief speech and extended a warm welcome to His Lordship.

Hon'ble Mr. Justice P.D. Dhinakaran, Chief Justice was pleased to address the gathering.

The Advocate General, Judicial Officers, Additional Advocate General, Office Bearers of the Bar Association of Sikkim as well as the High Court of Sikkim Bar Association, Officers & staff of the Registry were present on the occasion. Also present on the occasion were guests from High Court of Karnataka and Bar Association of Tamil Nadu.

*Glimpses of Welcome Dinner hosted in honour of
Hon'ble the Chief Justice, Mr. Justice P.D. Dinakaran*



INDEPENDENCE DAY CELEBRATION

August 15, 2010



The High Court of Sikkim observed the 64th Independence Day in its premises. The day was graced by the Hon'ble Chief Justice of the High Court of Sikkim, Mr. Justice P.D. Dinakaran and Hon'ble Judge, Mr. Justice S.P. Wangdi.

The Hon'ble Chief Justice unfurled the National Flag. Thereafter, guard of honour was given to His Lordship followed by the National Anthem, played by the Police Band. His Lordship delivered the Independence Day Message and extended greetings to all present.

Also present on the occasion were Dr.(Mrs.) K.M. Vinodhini Dinakaran (spouse of the Hon'ble Chief Justice), Mrs. T.T. Dorjee (spouse of Hon'ble Mr. Justice S.P. Wangdi), Judicial Officers, Superintendent of Police (East), Additional Advocate General, Members of the Bar, Officers & staff of the Registry.



IMPORTANT VISITS & CONFERENCES



1. On July 19, 2010 Hon'ble Mr. Justice S.P. Wangdi, Judge High Court of Sikkim attended the Third Foundation Day Celebrations "Sharing of Experiences and Initiation of the "Oral History Project" organized by Sikkim University at Sikkim Government College, Tadong, Gangtok.
2. Hon'ble Mr. Justice S.P. Wangdi, Judge, High Court of Sikkim and Executive Chairman, Sikkim State Legal Services Authority accompanied by the District & Sessions Judge (Special Division-I) & Member Secretary, Sikkim State Legal Services Authority & Registrar, High Court of Sikkim attended the "National Conference on Mediation" on 10th & 11th July, 2010 at New Delhi organized by the Mediation and Conciliation Project Committee, Supreme Court of India at Gulmohar Conference Hall.