



# COURT NEWSLETTER

## HIGH COURT OF SIKKIM

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### EDITORIAL BOARD

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**VACANCIES IN COURTS****(i) Vacancies in the High Court of Sikkim as on 31.12.2010**

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 31.12.2010**

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 1.10.10 to 31.12.10

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.12.10
	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	
1	36	15	25	26	16	13	10	19	45

### (2) District & Subordinate Courts from 1.10.10 to 31.12.10 (East & North) & (South & West)

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.12.10
	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	
1.	290	143	157	276	907	240	339	808	1084

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 31.12.10
	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	
1.	127	83	104	106	36	322	336	22	128

### (3) Family Court (East & North) at Gangtok from 1.10.10 to 31.12.10

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.12.10
	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	
1.	51	19	21	49	26	7	9	24	73

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 31.12.10
	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	
1.	1	1	1	1	21	4	8	17	18

(4) Family Court (South & West) at Namchi from 1.10.10 to 31.12.10

Sl. No.	Civil Cases				Criminal Cases				Total Pendency of Civil & Criminal Cases at the end of 31.12.10
	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	
1.	21	15	4	32	9	3	2	10	42

Sl. No.	Civil Miscellaneous Cases				Criminal Miscellaneous Cases				Total Pendency of Civil Misc. & Criminal Misc. Cases at the end of 31.12.10
	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10	
1.	2	0	0	2	7	3	2	8	10

(5) Lok Adalat Cases from 1.10.10 to 31.12.10

Sl. No.	Name of Lok Adalat	Opening Balance as on 1.10.10	Institution from 1.10.10 to 31.12.10	Disposal from 1.10.10 to 31.12.10	Pendency at the end of 31.12.10
1.	High Court Lok Adalat	5	1	2	4
2.	District Lok Adalat at Gangtok	16	95	70	41
3.	District Lok Adalat at Namchi	24	8	17	15
4.	Taluk Lok Adalats at Ravangla, Gyalshing, Mangan & Soreng	1	33	30	4
	Total	46	137	119	64



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





**1. Court cannot examine whether the acquisition of land by the Government was for public purpose or not-**

On 14/10/2010, the Division Bench of the Court in WP (PIL) No. 05 of 2010 (Athup Lepcha Vs. State of Sikkim & Ors.) has held that so long as it is not established that the acquisition of land by the Government is sought for some collateral purpose, the declaration of the Government that it is made for public purpose is not open to challenge. It is clear from Section 6(3) of the Land Acquisition Act, 1894 that declaration made under Section 6(1) shall be conclusive evidence that the land is needed for a public purpose unless it is shown that there was a colourable exercise of power. It is not open to the Court to go behind such declaration and find out whether the purpose for which the land was needed was a public purpose or not. The Court further held that challenge to a land acquisition is required to be made at the appropriate stage of the proceeding, and where there is delay in challenging the acquisition, the court will refuse to interfere in the acquisition proceedings.

*[Cases discussed- (1) K.R. Srinivas Vs. R.M.Premchand & Ors. (1994) 6 SCC 620; (2) S.P. Gupta & Ors. Vs. President of India & Ors. AIR 1982 SC 149; (3) Raunaq International Ltd. Vs. IVR Construction Ltd. & Ors. (1999) 1 SCC 492; (4) Pratibha Nema & Ors. Vs. State of M.P. & Ors. (2003) 10 SCC 626; (5) Jage Ram & Ors. Vs. State of Haryana & Ors. (1971) 1 SCC 671; (6) State of Rajasthan & Ors. Vs. D.R. Laxmi & Ors. (1996) 6 SCC 445; (7) Swaika Properties (P) Ltd. & Anr. Vs. State of Rajasthan & Ors. (2008) 4 SCC 695; (8) Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors. (1979) 3 SCC 489; (9) Narmada Bachao Andolan Vs. Union of India & Ors. (2000) 10 SCC 664; (10) A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (RETD.) & Ors. (1999) 2 SCC 718; (11) K.M.Chinnappa Vs. Union of India & Ors. AIR 2003 SC 724; (12) Shri Sachidanand Pandey & Anr. Vs. State of West Bengal & Ors. AIR 1987 SC 1109]*

**2. Instructions of Central Board of Direct Taxes (CBDT) issued under Section 199(2) of the Income Tax Act, 1961 are binding on the Income Tax Authorities, even if they deviate from certain statutory provisions-**

On 05/10/2010, a Single Bench of the Court in WP(C) No. 44 of 2009 (Chhabil Das Agarwal Vs. Union of India & Ors.) has held that it is a settled law that instruction of CBDT issued under Section 199(2) of the Income Tax Act, 1961 are binding on the Income Tax Authorities, even if they deviate from the provisions of the Act, so long as they seek to mitigate the rigour of a particular section for the benefit of the assessee. Such deviation is permitted, where they are made for just and fair administration of the law and it is not open to the department to raise contention which is contrary to the intention of the circular

or instruction validly issued by the CBDT. It was further held that the 'best judgment assessment' cannot be passed against the assessee where the assessee has not committed any deliberate default as mentioned under Section 144 of the Act.

[Cases discussed- (1) *CIT Vs. Abdul*, 248 ITR 744 & 753; (2) *Bajaj Vs. CIT*, 222 ITR 418]

**3. When the original Letter of Intent has not been challenged, the consequent agreement and its implementation also cannot be challenged-**

On 14/10/2010, a Single Bench of the Court in WP(C) No. 40 of 2005 (Nar Bahadur Bhandari & Ors. Vs. State of Sikkim & Ors.) has held that although the petitioners have challenged the agreement dated 18/07/2005 entered into between the Government of Sikkim and respondent No. 3 M/s. Teesta Urja Ltd. for setting up of Teesta Stage-III Hydro Electric Project in the state based on the policy of the state /Letter of Intent dated 26/02/2005, but have not challenged the Letter of Intent dated 26/02/2005 in pursuance of which the agreement was signed, as such, the petitioners have no locus standi to challenge the consequent agreement and the implementation of the project. The Court further held that the terms and conditions of the agreement are reasonable and in consonance with the Electricity Act, 2003 and the National Electricity Policy, 2005 and also ensure the interest of the public as well as of the state. It was further held that incorporation of respondent No. 3 (M/s. Teesta Urja Ltd.) as special purpose vehicle by M/s. Athena Projects for implementation of the project and its functioning was strictly in accordance with law, and the same was fair and transparent and in the interest of the state.

[Cases discussed- (1) *Sterling Computers Ltd. Vs. M/s M & N Publications Ltd. & Ors.* (1993) 1 SCC 445; (2) *Tata Cellular Vs. Union of India* AIR 1996 SC 11; (3) *Raunaq International Ltd. Vs. I.V.R. Construction Ltd. & Ors.* AIR 1999 SC 393]

**4. Application filed by the defendant under Order VIII Rule 1A of the C.P.C., 1908 can be allowed at the hearing of the suit with the leave of the court-**

On 21/10/ 2010, a Single Bench of the court in WP(C) Nos. 44/45 of 2010 (Prashant Kumar Goyal Vs. Smt Sogra Khatoon & Ors.) has held that Order VIII, Rule 1A(3) CPC enables the defendant to produce the documents with the leave of the court at the hearing of the suit; and refusal of such leave amounts to the failure to exercise the jurisdiction resulting in failure of justice. The court further held that application filed under Order XXVI, Rule 10A(1) CPC for referring the signature on certain documents for scrutiny by the experts should not be rejected by the trial court merely on such grounds that there is lack of