THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 2nd April, 2024

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.08 of 2020

Petitioner : Kumar Tamang @ Hari Kumar Tamang

versus

Respondents : State of Sikkim and Others

Application under Articles 226/227 of the Constitution of India

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Appearance

Mr. A. Moulik, Senior Advocate with Ms. K. D. Bhutia and Mr. Ranjit Prasad, Advocates for the Petitioner.

Mr. Thinlay Dorjee Bhutia, Government Advocate for the State-Respondents No.1 to 4.

JUDGMENT

Meenakshi Madan Rai, J.

1. The Petitioner is aggrieved by the cancellation of his Certificate of Identification (COI) issued on 03-07-1992, vide Sl. No.1253/DCE, by the District Collector (DC), East District, which identifies him as a resident of the State of Sikkim and by extension an indian national, without affording him allegedly, an opportunity of being heard. The Petitioner, while thus assailing the Order dated 12-02-2020 of the Respondent No.3, in Case No.03/DC/2019 (*Pahal Man Kami, Soreng, West Sikkim* vs. *Kumar Tamang, s/o. lt. Dhan Man Tamang*), contended that besides his COI being cancelled by the impugned Order, the Respondent No.3 in wrongful exercise of the jurisdiction conferred on him directed the Sub-Divisional Magistrates (SDM) of Gangtok, Rangpo, Rongli and Pakyong to cancel landed properties transactions which were based on the Petitioner's COI and further directed the Station House Officer

(SHO) of the Sadar Police Station to register a case against the Petitioner for misrepresentation of facts.

2. Learned Senior Counsel for the Petitioner adverting to the facts of the case contended that in the erstwhile kingdom of Sikkim, Sikkim Subject Certificate (SSC) was issued to its citizens in terms of the Sikkim Subject Regulation, 1961. This regulation was repealed from the "Appointed Day" i.e., 26-04-1975, when Sikkim became the 22nd State of India. Nevertheless, the state adopted the practice of issuing COI whereby such certificates were issued *inter alia* to persons whose father's name was included in the register of SSC. That, the Petitioner is a permanent resident of Kayong Busty, Pakyong Sub-Division and his parents are late Dhan Man Tamang and late Ganga Maya Tamang, which is recorded as such in the school admission register of the Government School, at Dikiling, where he was educated and his date of birth is 06-06-1966. He was known variously as Kumar Tamang and Hari Kumar Tamang. Later he chose to be a professional driver. The COI (*supra*) was issued to him on due verification obtained from the local Panchayat, the Superintendent of Police (SP), Special Branch, dated 17-06-1992 and from the office of the Revenue Supervisor (East), dated 07-05-1992. Both documents found him to be the son of late *Dhan Man Tamang*. That, from 2009 to 2019 the Petitioner's wife was elected as a Member of the Legislative Assembly (MLA), from a Constituency in South Sikkim and was a Minister in the Government led by the Sikkim Democratic Front party. To humiliate and defame her, one Madan Tamang was instigated by her political rivals to file a false case on 28-08-2018, complaining that her husband, had procured a COI falsely claiming to be the son of late Dhan Man Tamang

when in fact he was his step grandson. COI Case No.20 of 2018 (*Mr. Madan Tamang, r/o Palitam Busty, Namthang* vs. *Mr. Kumar Tamang, r/o. Kayong Busty, East Pendam*) was registered before the Respondent No.3, which was subsequently withdrawn on 16-01-2019, the Complainant having admitted that the Petitioner was the real son of late Dhan Man Tamang. A second Complaint dated 18-07-2019 came to be lodged by one Pahalman Kami, who too alleged that the Petitioner's COI was obtained falsely. This Complaint was registered as COI Case No.03/DC/2019 (*Pahal Man Kami, Soreng, West Sikkim* vs. *Kumar Tamang, s/o. lt. Dhan Man Tamang*) in the office of the Respondent No.3. On 20-11-2019, the Complainant sought to withdraw his Complaint on his failure to substantiate his case. The withdrawal application was taken up on the same date but the Respondent No.2 instead of giving the case a closure, *mala fide* issued an Order on 25-11-2019, directing Respondent No.3 to take up the matter *suo motu* and enquire immediately, *sans* reasons. It was further alleged that the above situation arose as the Respondent No.2 had inimical relations with the Minister on account of his transfer, allegedly at her behest, from the post of District Collector to a less influential post. That, at the instance of Respondent No.2, Respondent No.3 issued letters to the Principal of the Petitioner's school, the Station House Officer (SHO) Pakyong Police Station, and the SP, Special Branch and the relevant Panchayat. The report from the school dated 21-01-2020 (Annexure – P13) and the Panchayat report dated 17-12-2019 revealed that he is the son of late Dhan Man Tamang and the latter also certified that the COI was not obtained fraudulently. However, the SP, Special Branch, vide enquiry report dated 11-12-2019, reported the Petitioner to be the maternal grandson of late Dhan

Man Tamang and son of Nehma Tamang, the elder daughter of late Dhan Man Tamang. That, the Petitioner is the son of one Madan Chettri, who went missing five years ago and the Petitioner was residing in his maternal grandfather's house. That, despite the conflicting reports (*supra*) the Respondent No.2 and the Respondent No.3 did not take steps to unveil the real truth by extending an opportunity of hearing to the Petitioner but proceeded to pass the impugned Order devoid of any hearing.

(i) The Respondent No.2 in his Order, dated 20-01-2020 without conducting necessary verification erroneously concluded that the COI of the Petitioner was obtained fraudulently as documents failed to establish his relationship with the SSC holder. The Respondent No.2 further observed that only the Panchayat report is not an adequate document for issuance of a COI, that, moreover the COI was obtained from his mother's side as per the IB report. The Petitioner's reply dated 10-02-2020 was not considered before the impugned Order cancelling the Petitioner's COI was issued on 12-02-2020. The Respondent No.2 has therefore resorted to cherry picking documents suitable for the purpose of cancelling the COI of the Petitioner. Pointing to the note sheet records dated 20-01-2020, 21-01-2020, 22-01-2020 and 29-01-2020, it was urged that apart from the documents not being made over to the Complainant, no hearing on the matter was taken up at any time by the Respondents. On 29-01-2020 the Petitioner was afforded time till 31-01-2020 to submit relevant documents on which date he sought time till 03-02-2020. It is the Petitioner's claim that Nehma Tamang who allegedly deposed before the SHO Pakyong, was a lady of unsound mind, while the Sub-Inspector of Police who submitted her report, dated 26-01-

2020, had pressurized the local Panchayat Members to withdraw or change their Panchayat report dated 17-12-2019 regarding the parentage of the Petitioner. That, the report also stated that the Petitioner was the son of one Sikkimey Jetha Ghising of Soreng. That, late Dhan Man Tamang was his step grandfather. A verification report sought for by the Respondent No.3 and submitted by Assistant Sub-Inspector of Police, Dawa Singh Tamang of Rorathang, dated 30-12-2019, establishing that the Petitioner was the son of late Dhan Man Tamang, to the detriment of the Petitioner, was not considered by the Respondent No.2. That, the impugned Order also mentions a Complaint filed by one Durga Bahadur Chettri, resident of Bermiok Tokal, South Sikkim, alleging fraudulent obtainment of the Petitioner's COI but a copy thereof was never handed over to the Petitioner to enable him to file an effective reply. Thus, the impugned Order has not only violated the Petitioner's right to a hearing but has been issued against the principles of fair play and natural justice infringing his rights under Articles 14, 19, 21 and 300A of the Constitution of India. That, there being no other alternate, efficacious and speedy remedy in the matter and as the Petitioner's wife belongs to a rival political party, it would be an exercise in futility to approach the Appellate Authority against the impugned Order. Hence, the impugned Order being erroneous, arbitrary and issued with a pre-conceived mind on political considerations be set aside. The prayers in the Writ Petition *inter alia* are as follows;

> **"PRAYER**
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> In the circumstances it is prayed that this Hon'ble High Court may be pleased to issue:-
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> (i) .....
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> (ii) **A writ or order or direction or declaration that the impugned order having issued illegally is set aside, quashed and cancelled.**
>
> (iii) .....

(iv) A writ or order or direction or declaration that the respondent no.4 (the SHO Sadar PS) shall not initiate any criminal proceeding against the petitioner in pursuance to the impugned order dated 12/02/2020. In the mean time if the respondent no.4 has initiated any criminal case/proceeding against the petitioner then to stay its further proceedings;

.....**"**

(ii) Learned Senior Counsel for the Petitioner while buttressing his arguments garnered support from the decision in ***Radha Krishan Industries*** vs. ***State of Himachal Pradesh and Others***[1] wherein the principles of law pertaining to the exercise of Writ jurisdiction have been delineated by the Supreme Court. That, the ratio observes that an alternate remedy by itself does not divest the High Court of its power under Article 226 of the Constitution of India in an appropriate case, though, ordinarily a Writ Petition should not be entertained when an efficacious alternate remedy is provided by law. Strength was also drawn from the decision in ***Gulzar Singh*** vs. ***Sub-Divisional Magistrate and Another***[2] where the Scheduled Caste certificate of a person was cancelled by the concerned Authority in violation of the principles of natural justice, the Appeal was allowed. That, in a similar case, this Court in ***Bhim Bahadur Kami and Others*** vs. ***State of Sikkim and Others***[3] was pleased to exercise its Writ jurisdiction without directing the Petitioner to take recourse to the alternate remedy or approach the Appellate forum. It is urged that the circumstances in this matter being similar the prayers herein be considered on the same lines and reliefs be granted.

3. Vehemently contesting the claims put forth by Learned Senior Counsel for the Petitioner, Learned Government Advocate

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[1] (2021) 6 SCC 771

[2] (1999) 3 SCC 107

[3] [WP(C) No. 33 of 2020 decided on 08-07-2022 : 2022 SCC OnLine Sikk 73]

for the State-Respondents No.1 to 4 contended that the allegation and submissions made by the Petitioner are contrary to the records. That, while obtaining the COI in the year 1992 the Petitioner had misrepresented and misled the issuing authority that he was the son of late Dhan Man Tamang and late Ganga Maya Tamang *sans* documents to fortify his claims, besides there are no records to indicate that Kumar Tamang and Hari Kumar Tamang are one and the same person. While admitting that the Panchayat in their verification report dated 17-12-2019 had stated that the Petitioner is the son of late Dhan Man Tamang, it was submitted that the Panchayat report pales in the face of the fact that no proof exists on this count. When the COI was obtained by the Petitioner it was only on the basis of the reports of the SP East, the Revenue Supervisor and Panchayat Members all of which however identified him as Kumar Tamang, son of late Dhan Man Tamang and not Hari Kumar Tamang as well. Hence, the Petitioner's claim that Hari Kumar Tamang and Kumar Tamang are one and the same person has no merit. That, as the two Complainants mentioned by the Petitioner *supra*, withdrew their Complaints within a few days of registering their respective cases, it is indicative of the fact that the Petitioner resorted to unfair means and tactics to persuade them to withdraw their Complaints. The fact that the transfer certificate of Hari Kumar Tamang was obtained belatedly in the year 2018 from the school where he allegedly studied reveals that the Petitioner had resorted to fraudulent means to prove that he is the son of late Dhan Man Tamang. Categorically submitting that the Petitioner's claims of violation of the fundamental rights were baseless, it was argued that the enquiry against the Petitioner was conducted as per the provisions of Notification bearing

No.119/Home/2010, dated 26-10-2010 and the answering Respondents have not influenced the reports of the Special Branch and the SHO Pakyong. That, on receipt of the Complaint from Pahalman Kami the first hearing was held on 26-09-2019 during which the Complainant and the Petitioner were present, belying the Petitioner's contentions of lack of hearing. A copy of the Complaint was made available to the Petitioner who was directed to submit his reply before 06-11-2019 to which he requested for an adjournment on 07-11-2019 but failed to submit his reply. Another hearing then followed on 29-01-2020 during which the verification reports received from the Special Branch of Police, SHO Pakyong Police Station and concerned Gram Panchayat were given to the Petitioner and he was directed to submit his reply if any by 31-01-2020 which he again filed belatedly on 10-02-2020. Besides the above, he was also given an opportunity to submit any relevant documents pertaining to his COI to counter the allegations but no documents were submitted. The report of the Special Branch of Police and the Pakyong Police Station dated 11-12-2019 and 26-01-2020 respectively clearly establish that the Petitioner is not the son of late Dhan Man Tamang. The report dated 30-12-2019 said to be in favour of the Petitioner is not in the records maintained by the office and was never received by the State-Respondents from such a person. Denying the allegation of the Order being arbitrary and in excess of jurisdiction, it was contended that the Petitioner was dealt with judiciously and afforded sufficient opportunity to defend his case. That, an alternate efficacious remedy of an Appellate forum established vide Notification bearing No.119/Home/2010, dated 26-10-2010, is available to the Petitioner, who cannot be allowed to invoke the Writ jurisdiction of

this Court without exhausting the remedy available. Hence, the Respondents having acted fairly and judiciously the Writ Petition deserves a dismissal.

(i) Learned Government Advocate drew succour from the decision of this High Court in ***M/S Linkwell Telesystems Pvt. Ltd.*** vs. ***The State of Sikkim and Others***[4]. The Petitioner therein had failed to approach the Appellate Authority, this Court had held that the Petitioner had failed to advance an exceptional circumstance for invoking the Writ jurisdiction of this Court under Article 226 of the Constitution of India and dismissed the Writ Petition.

4. After having heard Learned Counsel for the parties at length and on perusing all documents on record, it is apparent that the parties are at loggerheads regarding the facts as detailed *supra* before this Court. The Petitioner asserts that no opportunity of a hearing was afforded to him, despite the serious allegations and aspersions cast on him, augmented by the fact that conflicting reports regarding his parentage and name had been alleged. On the other hand the Respondents with equal fervour asserted that more than adequate opportunities of hearing apart from permitting the Petitioner to furnish all documents were granted by the concerned Authority to enable him to fortify his claims. That, the COI issued in 1992 to him was without adequate verification and with documents which misled the Authorities.

(i) In the back drop of the facts narrated and in light of the opposing contentions extracted hereinabove, the question that first arises for consideration is whether this Court ought to interfere under Articles 226/227 of the Constitution of India with an Order

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[4] [WP(C) No.23 of 2021 decided on 09-06-2021 : 2021 SCC OnLine Sikk 69]

passed by the Additional District Collector, despite the availability of a statutory alternative remedy of Appeal?

(ii) Although Learned Senior Counsel for the Petitioner had drawn the attention of this Court to the decision in ***Bhim Bahadur Kami and Others*** (*supra*) and urged that it is similar to the said matter and the Court therein had exercised it jurisdiction under Article 226 of the Constitution of India instead of relegating the matter to the Appellate forum, in my considered opinion, although both matters pertain to cancellation of COI of the Petitioners, the similarity truncates there. In the case of ***Bhim Bahadur Kami and Others*** (*supra*) after the COI was alleged to be a fraudulent document although having been issued on necessary verification having been obtained from the appropriate Authorities, a re-verification was conducted by a Commission of which the Chairman was a retired High Court Judge no less. On such re-verification it was concluded by the Commission that the COI of the Petitioners therein were not fake or fraudulent. Consequently, when the COI came to be cancelled for the second time despite such re-verification, this Court was of the considered view that from the facts and circumstances of the matter, the Respondents therein had *inter alia* exercised authority exceeding their jurisdiction and exercised the jurisdiction under Article 226 of the Constitution. Contrary to the afore stated situation there has been no re-verification of the COI of the Petitioner and this Court is not in a position to consider and determine questions of fact raised in this Petition *sans* evidence being led on the touchstone of the Indian Evidence Act, 1872.

(iii) I am quite aware that the Supreme Court in a plethora of its judgments has held that an alternate remedy by itself does

not divest the High Court of its powers under Article 226 of the Constitution in a proper case, but it does come with a caveat that a Writ Petition should not be entertained when an efficacious alternate remedy is provided.

(iv) In the context of an alternate remedy, in the matter at hand, a perusal of the Notification extracted hereinbelow would clear the air. Notification bearing No.119/Home/2010 dated 26-10-2010 reads as follows;

> **"SIKKIM**
> **GOVERNMENT GAZETTE**
> **EXTRAORDINARY**
> **PUBLISHED BY AUTHORITY**
> **Gangtok Monday 1st November, 2010 No. 590**
> **GOVERNMENT OF SIKKIM**
> **HOME DEPARTMENT**
> **GANGTOK**
> **No.119/Home/2010 Date: 26/10/2010**
>
> **NOTIFICATION**
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> ……..……..
> (1) ……
> (2) ……..……
> (3) ……..……
> (4) ……
>
> "The issuing authority is also authorized to cancel the Certificate of Identification of a person if it is reasonable established that the Certificate has been obtained by him/her or on his/her behalf by misrepresentation or suppression of any material fact.
>
> **Any person aggrieved by the refusal to grant or cancellation of his/her Certificate of Identification by the Issuing Authority may apply within one month of such refusal or cancellation to the Secretary, Land Revenue & Disaster Management Department for redress**."
>
> **BY ORDER AND IN THE NAME OF THE GOVERNOR.**
>
> **TT Dorji, IAS**
> **CHIEF SECRETARY**
> **File. No. Home/Confdl./158/1994/2/Part"**
> **(emphasis supplied)**

It is thus clear that the Secretary, Land Revenue and Disaster Management Department, Government of Sikkim is the Appellate Authority in matters such as the instant one.

(v) Indeed, I hasten to add that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of

discretion and not of compulsion. [See ***Harbanslal Sahnia and Another*** vs. ***Indian Oil Corpn. Ltd. and Others***[5]]

(vi) While considering the question of exercise of power conferred by Article 226 of the Constitution of India despite availability of a statutory alternative remedy in ***Embassy Property Developments Private Limited*** vs. ***State of Karnataka and Others***[6]***,*** the Supreme Court observed as follows;

> **"24.** Therefore insofar as the question of exercise of the power conferred by Article 226, despite the availability of a statutory alternative remedy, is concerned, *Anisminic* [*Anisminic Ltd.* v. *Foreign Compensation Commission*, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] cannot be relied upon. **The distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction, should certainly be taken into account by High Courts, when Article 226 is sought to be invoked bypassing a statutory alternative remedy provided by a special statute."**
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> **(emphasis supplied)**

(vii) In ***Radha Krishan Industries*** (*supra*) relied on by Learned Senior Counsel for the Petitioner, it was observed at Paragraphs 27.5 and 27.6 as follows;

> **"27.** .....
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> **27.5.** When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. **This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.**
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> **27.6.** In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.
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> **...**....."
>
> **(emphasis supplied)**

(viii) It is settled law that, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution the High Court can entertain a Writ Petition against any Order passed by or action taken by the State, its agency, or any public authority, quasi-judicial body and it is an altogether

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[5] (2003) 2 SCC 107

[6] (2020) 13 SCC 308

different thing to say that each and every Petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy.

(ix) In ***Thansingh Nathmal and Others*** vs. ***The Superintendent of Taxes, Dhubri and Others***[7]***,*** while discussing that under Article 226 of the Constitution of India the High Court does not act as a Court of Appeal, the Supreme Court observed as follows;

> **"**(7) ……. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.**"**

(x) Consequently, in light of the pronouncements *supra* and bearing in mind the facts delineated hereinabove, in my considered opinion, as a statutory forum created by law for redressal of grievances exists, the Writ Petition cannot be entertained by ignoring the statutory dispensation, which the Petitioner is at liberty to approach to vent his grievances and obtain the appropriate relief, without him being weighed down by preconceived perceptions.

(xi) The question formulated above stands determined accordingly.

(xii) The Writ Petition deserves to be and is dismissed and disposed of.

(xiii) Pending applications also stand disposed of.

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[7] AIR 1964 SC 1419

5. Records received from the Office of the Respondent No.2 be remitted forthwith to it.

(Meenakshi Madan Rai)
Judge
02-04-2024

Approved for reporting : **Yes**

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