

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 17 of 2021

Mr. Karma Thupden Chopel Bhutia,
Aged about 27 years,
Son of Late Karma Sonam Bhutia,
Resident of Lingdum, East Sikkim.

..... Petitioner

Versus

1. The State of Sikkim
Through the Chief Secretary,
Government of Sikkim,
Gangtok.
2. The Land Revenue and Disaster Management
Department,
Through the Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.
3. The District Collector,
North, District Administrative Centre,
Mangan, North Sikkim.
4. Mr. Rinchen Thargay Bhutia @ Anand Singh Rahul,
S/o Late Ugen Tenzing Bhutia,
Resident of Swastik, Burtuk, Near Milan Hardware,
P.O. & P.S. Gangtok-737101, East Sikkim.

.....Respondents

Application under Article 226 of the Constitution of India.

Appearance:

Mr. S. S. Hamal, Senior Advocate with Mr. Pradeep Sharma,
and Mr. Anirudh Gupta, Advocates for the Petitioner.

Mr. Thinlay Dorjee Bhutia, Government Advocate and Mr. Yadev
Sharma, Government Advocate for the Respondent nos. 1 to 3.

Mr. Karma Thinlay Namgyal, Senior Advocate with Mr. Yeshir N.
Tamang and Mr. D. K. Siwakoti, Advocates for the Respondent
No.4.

Date of hearing : 15.05.2023
Date of Judgment : 15.05.2023

J U D G M E N T (O R A L)

Bhaskar Raj Pradhan, J.

1. The preliminary issue of *locus standi* of the petitioner raised by the respondents seems to have considerable force and is taken up for consideration before considering whether the writ petition requires to be examined on the merits.

2. One Karma Thupden Chopel Bhutia, resident of Lingdum, East Sikkim (petitioner) seeks to challenge the certificate of identification issued to Rinchen Thargay Bhutia @ Anand Singh Rahul-the respondent no.4 in the year 1995 by filing the present writ petition. The petitioner apparently would have nothing to gain or lose from either the grant or cancellation of the Certificate of Identification to the respondent no.4 save some personal interest which is not disclosed in the writ petition.

3. Admittedly, the respondent no.4 was granted the Certificate of Identification by the concerned authorities in the year 1995. It seems that this Certificate of Identification was initially sought to be challenged by one Mr. Tashi

Wangchuk Lepcha unsuccessfully and thereafter, now by the petitioner. The petitioner along with two others seems to have filed a complaint before the respondent no.3 seeking inquiry and cancellation of the Certificate of Identification of the respondent no.4. On 27.10.2018 the said complaint was dismissed. The petitioner and the others preferred an appeal before the respondent no.2 who vide order dated 02.03.2019 dismissed the appeal as well. Both these orders are sought to be challenged in the present writ petition. The petitioner also seeks the cancellation of the Certificate of Identification of the respondent no.4.

4. Although in the writ petition there is no specific plea pointed out by Mr. S.S. Hamal, learned Senior Counsel appearing for the petitioner on infringement of the petitioner's fundamental right or legal right, during the course of the argument, it is submitted that it flows from Notification No.119/HOME/2010 dated 26.10.2010 (the 2010 notification) as well as from Article 51A of the Constitution of India.

5. Article 51A of the Constitution of India deals with fundamental duties of every citizen which cannot be enforced by writs. The State of Sikkim issues Certificate of Identification to certain categories of person enumerated as

eligible in various notifications. The 2010 notification partially amends the previous notification and inter-alia inserts a proviso after item 5 as well as another paragraph, which according to Mr. S.S. Hamal, learned Senior Counsel appearing for the petitioner gives the *locus standi* to the petitioner, to the following effect:

“The issuing authority is also authorized to cancel the Certificate of Identification of a person if it is reasonably established that the certificate has been obtained by him/her or on his/her behalf by misrepresentation or suppression of any material facts. Any person aggrieved by the refusal to grant or cancellation of his/her certification of identification by the issuing authority may apply within one month of such refusal or cancellation to the Secretary, Land Revenue, and Disaster Management Department for redress. ”

6. The 2010 notification issued on 26.10.2010 reflects that it shall come into force with immediate effect. As the 2010 notification was published in the Sikkim Government Gazette on 01.11.2010 it would be deemed to have come into effect from 01.11.2010.

7. Mr. S.S. Hamal, learned Senior Counsel appearing for the petitioner relied upon the judgment of the Supreme Court in ***Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed***¹ in support of his plea that the petitioner does have a *locus standi* to bring the present writ petition. The question before the Supreme Court was whether the

¹ (1976) 1 SCC 671

proprietor of a cinema theatre holding a licence for exhibiting cinematograph films is entitled to invoke certiorari jurisdiction *ex debito justitiae* to get a 'No-Objection Certificate', granted under Rule 6 of the Bombay Cinema Rules, 1954 by the District Magistrate in favour of a rival in the trade, brought up and quashed on the ground that it suffers from a defect of jurisdiction. The relevant paragraph relied upon by Mr. S. S. Hamal are extracted hereinbelow:-

“37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) “person aggrieved”; (ii) “stranger”; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of “persons aggrieved”. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be “persons aggrieved”.

39. To distinguish such applicants from “strangers”, among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal

wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person “against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?” Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words “person aggrieved” is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?”

8. Mr. Karma Thinlay Namgyal, learned Senior Counsel appearing for the respondent no.4 on the other hand pressed the judgment of a constitutional bench of the Supreme Court in ***State of Orissa vs. Madan Gopal Rungta***². The Supreme Court while examining the scope of Article 226 of the Constitution of India held as follows:-

“13. The language of the Article shows that the issuing of writs or directions by the court is founded only on its decision that a right of the aggrieved party under part III of the constitution (fundamental rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the rights is the foundation of the exercise of jurisdiction of the court under this article.”

9. In ***Ayaubkhan Noorkhan Pathan vs. State of Maharashtra***³ the Supreme Court was examining a complaint filed by a complainant before the scrutiny committee 9 years after the issuance of a caste certificate

² 1951 SCC 1024

³ (2013) 4 SCC 465

on the ground that the appellant had obtained employment by way of misrepresentation and that he did not actually belong to the scheduled tribe category. The Supreme Court held:

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta [1951 SCC 1024 : AIR 1952 SC 12] , Saghir Ahmad v. State of U.P. [AIR 1954 SC 728] , Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044] , Rajendra Singh v. State of M.P. [(1996) 5 SCC 460 : AIR 1996 SC 2736] and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar [(2009) 2 SCC 784] .]

10. *A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York [(1974) 2 SCC 387 : AIR 1974 SC 1719] and State of Rajasthan v. Union of India [(1977) 3 SCC 592 : AIR 1977 SC 1361] .)*

.....”

“19. *This Court in Ravi Yashwant Bhoir v. District Collector, Raigad [(2012) 4 SCC 407] , held as under : (SCC pp. 434-35, paras 58-60)*

*“58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*.*

*59. The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a *locus standi* to sue upon the individual. There must be *injuria* or a legal grievance which can be appreciated and not a *stat pro ratione voluntas* reasons i.e. a claim devoid of reasons.*

60. Under the garb of being a necessary party, a person cannot be permitted to make a case as that of general public interest. A person having a remote interest cannot be permitted to become a party in the lis, as the person who wants to become a party in a case, has to establish that he has a proprietary right which has been or is threatened to be violated, for the reason that a legal injury creates a remedial right in the injured person. A person cannot be heard as a party unless he answers the description of aggrieved party.”

10. A perusal of 2010 notification does not reflect that it gives any statutory right to the petitioner to seek cancellation of a Certificate of Identification issued to someone else. What it does is authorize the Issuing Authority to cancel the Certificate of Identification of a person if it is reasonably established that the certificate has

been obtained by him/her or on his/her behalf by misrepresentation or suppression of any material fact. The next paragraph which deals with “person aggrieved” clearly reflects that the “person aggrieved” must be the person who has been refused the Certificate of Identification or whose Certificate of Identification has been cancelled. It is only those two categories of persons who would be “person aggrieved” to prefer and apply to the Secretary, Land Revenue and Disaster Management for redressing of the grievance of refusal to grant or cancellation of his certificate of identification. The petitioner in the instant case is neither the Issuing Authority nor the person whose Certificate of Identification was either refused or cancelled. The petitioner is therefore, not a party to the *lis*. Merely because the Issuing Authority is authorized to cancel the Certificate of Identification of a person, does not give any statutory right to the petitioner to prefer the present writ petition as a “person aggrieved”.

11. Mr. S. S. Hamal also referred to the judgment of this court in W.P. (Crl.) No. 04 of 2013 in ***Mani Kumar Gurung vs. State of Sikkim*** dated 22.07.2014. However, this was a writ petition preferred by the persons whose Certificate of Identification were cancelled. This case does not take the petitioner’s case any further as it does not deal with the

issue of *locus standi* which is the primary concern at the present.

12. Having examined the writ petition including the prayers sought for as well as the judgments cited by the learned counsel for the parties this court is of the view that the petitioner did not have the *locus standi* to challenge the impugned orders before this court. The preliminary issue raised by the respondents is upheld and the writ petition is dismissed on this preliminary point without examining the merits sought to be raised by the petitioner.

13. No order as to cost.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

to/