

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 8th July, 2022

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

WP(C) No.33 of 2020

Petitioners : Bhim Bahadur Kami and Others

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. J. B. Pradhan, Senior Advocate with Mr. D. K. Siwakoti, Ms. Prarthana Ghataney and Mr. Bhusan Nepal, Advocates for the Petitioners.

Mr. Sudesh Joshi, Additional Advocate General with Mr. Thinlay Dorjee Bhutia and Mr. Yadev Sharma, Government Advocates and Mr. Sujan Sunwar, Assistant Government Advocate for the State-Respondents No.1 to 4.

Mr. Jushan Lepcha and Mr. Chewang Norbu Bhutia, Advocates for Respondent No.5.

Mr. Jorgay Namka, Legal Aid Counsel with Mr. Simeon Subba, Advocate for Respondent No.6.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The Petitioners are aggrieved by the impugned Order dated 17-12-2019 issued by the Additional District Magistrate-cum-Additional District Collector, Headquarters, East District, at Gangtok (Respondent No.3), in COI Case No.27/DM/East of 2018 (*Nim Pincho Bhutia vs. Bhim Bahadur Kami*), whereby the Certificate of Identification (COI) issued to each of the Petitioners was cancelled. The Judgment/Final Order dated 13-10-2020, issued by the Appellate Authority, Land Revenue & Disaster Management Department (Respondent No.2), upheld the impugned

Order *supra* in Appeal Case No.01 of 2020. The Petitioners are before this Court, assailing both.

2(i). A brief factual narrative is essential for a just determination of the matter. The Petitioners claim to be descendants of one Late Gumaney Kami and his wife Late Echu Maya, the Petitioner No.1 being the son of the said persons, while the Petitioners No.2 to 6 claim to be their grandsons, being the sons of the Petitioner No.1. Gumaney Kami undisputedly was a Sikkimese, holding a Sikkim Subject Certificate (SSC) bearing Sikkim Subject Register Serial No.32, Volume Number II, under Block Sajong, issued on 06-11-1967. As per the Petitioners, around 1943-44, Gumaney married Echu Maya and from the wedlock had four sons and two daughters. From the four sons, two passed away while the youngest son lives in Tadong, Gangtok, the Petitioner No.1 is the other son. That, Gumaney Kami was a Scheduled Caste of the Sikkimese Nepali community known variously by the surnames of 'Biswakarma', 'Lohars' or 'Sunars'. That, 'Kamis' also have several 'Thars' (sub-castes) and Gumaney Kami belonged to the 'Rasaily' (sub-caste).

(ii) The Petitioner No.1 said to be an illiterate villager and a Blacksmith by profession applied for a COI in the year 1998 which was issued to him being COI No.2147/DC/E, dated 06-10-1998, by the Respondent Authorities on the recommendation of the Gram Panchayat and Police verification, as mandated by the relevant Notification. Based on the COI of the Petitioner No.1, COIs were issued to the Petitioners No.2, 3 and 6 on 30-08-2006 and Petitioners No.4 and 5 on 31-08-2006. That, on 24-12-2007, the Petitioner No.4 lost his official documents including the COIs of

all the Petitioners upon which he immediately lodged an FIR in the Sadar Police Station and the concerned Authorities reissued COIs to the Petitioners on 27-12-2007 on their request.

(iii) That, on 29-08-2018 the Respondent No.5 and on 04-09-2018 the Respondent No.6, filed Complaints, respectively, against the Petitioner No.1 alleging that the Petitioner No.1 fraudulently obtained his COI. A single case based on the two Complaints was evidently registered by Respondent No.3 against the Petitioner No.1, being COI Case No.27/DM/East of 2018 and on 11-10-2018 the Petitioner No.1 was summoned to appear before the Respondent No.3 on 24-10-2018. The Petitioner No.4 represented Petitioner No.1 before Respondent No.3. A copy each of the written Complaints were allegedly not made over to him nor was he afforded an opportunity to file his response thereof. The Respondent No.3 after examining witnesses at a "*Panchayat Ghar*" which he visited personally for the said purpose, issued the impugned Order, dated 17-12-2019 cancelling the COIs of all the Petitioners with the observation *inter alia* that the Petitioner No.1 had fraudulently acquired his COI by misleading the Office of the Additional District Collector/District Collector, East. Aggrieved thereof, the Petitioner No.1 was before the Appellate Authority with an Appeal on 16-01-2020. The Appellate Authority vide its impugned Judgment/Final Order dated 13-10-2020, upheld the impugned Order dated 17-12-2019.

(iv) It was the further case of the Petitioners that in WP(PIL) No.06 of 2015 (*Biraj Adhikari vs. State of Sikkim and Others*) filed before this Court and registered on 28-09-2015, an allegation of 31,188 fake cases of COI in the State was made by the

Petitioner and he sought an enquiry and cancellation of the fake COIs. A Commission headed by Hon'ble Mr. Justice Malay Sengupta (Retired) was constituted by the State Government, on the Orders of this Court *inter alia* to enquire into allegations of issuance of doubtful/fake COI and submit its Report within three months from the date of constitution of the Commission. In the PIL, the State-Respondents filed an Affidavit specifying the manner in which the scrutiny would be carried out. Pursuant thereto on scrutiny by the Commission, the COI of the Petitioner No.1 Bhim Bahadur Biswakarma Kami was "verified and found correct". However, the Respondents No.2 and 3 while passing the impugned Orders completely ignored the findings of the Final Report of the Commission dated 18-08-2018 which was duly accepted by the State Government on 27-09-2018 and submitted before this Court on 02-11-2018 in the said PIL giving it a closure. Hence, the prayers in the Writ Petition to issue a Rule calling upon the Respondents to show cause as to why;

- (a) *A writ or order or directions or declaration in the nature of Certiorari or any other appropriate writ should not be issued declaring the impugned orders dated 17.12.2019 [Annexure P-9] passed by the Respondent No.3 and 13.10.2020 (Annexure P-10) passed by the Appellate Authority (Respondent No.2) cancelling the COIs of the petitioners to be illegal, arbitrary, erroneous, perverse, bias, in violation of the principles of natural justice, against the law and without any jurisdiction or authority of law.*
- (b) *A writ or order or direction or declaration in the nature of Mandamus or any other appropriate writ should not be issued declaring that the COI of Petitioner No.1 having been in the list of 31,188 doubtful cases of COI of East District at serial no.5354 and having been enquired into and verified by the Commission headed by the retired Judge of this Hon'ble Court Hon'ble Mr. Justice Malay Sengupta (retd) vide the Final Report dated 18.08.2018 and accepted by the State Government on 27.09.2018 and filed before this Hon'ble Court in WP(PIL) No.06 of 2015 in the matter of Biraj Adhikari versus State of*

Sikkim and Others, to be legal and valid in terms of the Final Report and not to interfere with the same.

- (c) *Issue an appropriate Writ, Order or Direction declaring the inquiry conducted by the Respondent No.3 Additional District Magistrate, HQ to be illegal, against the rules and Government Notifications Annexure P-2, P-3, P-4, P-5 and without jurisdiction and authority of law.*
- (d) *A writ or order or directions or declaration in the nature of Mandamus or any other appropriate writ or order or direction should not be issued declaring that the Petitioners under the law are entitled to the COIs issued to them by the Respondent No.4.*
- (e) *A writ or order or directions or declaration in the nature of Prohibition or any other appropriate writ, order or direction should not be issued prohibiting the official Respondents No.1, 2, 3 and 4 their servants and agents from further enquiring into the COIs of the petitioners, on the basis of the said complaints of Respondent No.5 & 6, in view of the enquiry, scrutiny, verification already conducted by an independent Agency namely, the Commission headed by the retired Judge of this Hon'ble Court which has found the COI issued to the Petitioner No.1 to be "verified and found correct" vide their 'Final Report' dated 18.08.2018 filed before this Hon'ble Court on 01.11.2018 by the State Government in WP(PIL) No.06 of 2015 in the matter of Biraj Adhikari versus State of Sikkim and Others.*
- (f) *Pass an ad interim ex-parte order staying further operation of the impugned orders dated 17.12.2019 [Annexure P-9] passed by the Respondent No.3 and 13.10.2020 (Annexure P-10) passed by the Appellate Authority (Respondent No.2) cancelling the COIs of the petitioners as the said order is yet to be executed and to restrain the official respondents from giving further effect to and acting in terms of the said impugned orders.*
- (g) *And upon cause or causes that may be shown and after hearing the parties as well as on perusal of records be pleased to make the Rule absolute and / or pass such other further order / orders as this Hon'ble Court may deem fit and proper in the interest of justice.*

3. Respondents No.1, 2, 3 and 4 contested the Petition and in a joint return averred that Respondent No.5 in her Complaint alleged that many fake COIs had been issued to individuals claiming to be descendants of Gumaney Kami, while the Respondent No.6 claimed that the Petitioner No.1 had fraudulently acquired COI for himself and his sons claiming to be the son of

Gumaney Kami. That, copies of the Complaints were made over to the Petitioner No.1 and in order to ensure a fair trial, on 24-09-2019 accompanied by the Court Peshkar, Respondent No.3 visited the "*Panchayat Ghar*" at Sajong, East Sikkim and examined the local public and senior citizens of the area. That, the Petitioner No.1 fraudulently obtained Panchayat recommendation in the year 1998 from Naitam-Nandok Gram Panchayat on a misrepresentation of facts. The Panchayat which in the first instance lacked jurisdiction to issue the recommendation as Gumaney Kami's name was recorded under the Sajong Block and not under Naitam-Nandok. That, the Petitioner No.1 is not the son of Gumaney Kami as neither his nor his mother's name are found to be recorded in the Register of Sikkim Subjects Certificate. That, the Writ Petition thereby deserves a dismissal.

4. Respondent No.5, a Panchayat President in Sajong Ward, East District, in her response averred that she came to learn that the Petitioners had procured fake COIs, on the basis of queries made to the previous Panchayat Members who informed her that they had never issued any recommendation for issuance of COI in favour of the Petitioners. It thus transpired that the Petitioners had fraudulently procured the COIs which bore variations in the names and titles of the Petitioners. While Petitioner No.2 and the Petitioner No.6 have an age gap of almost 13 years between them, but have all applied for COIs on the same day. That, there were no independent identifiers of the Petitioners during the preparations of the COI and the daughters of the Petitioner No.1 evidently had no COIs. The SCC records do not bear the name of the Petitioner No.1 and only the names of two daughters of

Gumaney Kami were found recorded therein, thus the Writ Petition being without merit deserves a dismissal.

5. The Respondent No.6 who belongs to Swayem, North Sikkim, in his Counter-Affidavit stated that he gathered information along with Respondent No.5 to the effect that the Petitioners had fraudulently represented themselves as legal heirs of Late Gumaney Kami and procured two sets of fake COIs. That, records reveal that one Kaziman Kami resident of Sajong Block had two sons, namely, Chabilal Kami and Gumaney Kami. Gumaney Kami in turn had two family members, namely, Suk Maya Kamini born on 09-03-1954 and Birda Maya Kamini born on 09-10-1960 whose names are reflected in the SSC Register under Block Sajong. Gumaney Kami in fact lived with a widow and her five children from her previous marriage, thus the Petitioner No.1 not being the son of Gumaney Kami had impersonated himself as such and obtained a COI in 1998. Based on this fake COI, the Petitioners No.2 to 6 illegally obtained COIs by misleading the concerned Authorities. The grounds set out in the Writ Petition being untenable it deserves to be dismissed.

6. Rejoinders were filed by the Petitioners to the Counter-Affidavits of all the Respondents wherein it was *inter alia* averred that the Complaint of Respondent No.5 was only to the extent that many fake COIs had been issued to individuals claiming to be descendants of Gumaney Kami but there was no specific or direct allegation against the Petitioners. That, Respondent No.6 was not a resident of the area and had no personal information about Gumaney Kami. That both Respondent No.5 and Respondent No.6 in their Affidavits failed to disclose their source of information.

7(i) Learned Senior Counsel for the Petitioners drew the attention of this Court to the Government Notification No.66/Home/95, dated 22-11-1995. It was contended that the Respondents have agitated the contention that the Petitioner No.1 had obtained his COI on the basis of the recommendation from the Naitam-Nandok Gram Panchayat whereas the name of Gumaney Kami, on the basis of whom the COIs were obtained, was recorded in Sajong. It was urged that in fact the concerned Notification does not specify that the Panchayat recommendation is to be obtained from a particular Panchayat Block therefore the Petitioners obtained the recommendations from the Panchayat of the area of which they were residents. Besides both Naitam-Nandok and Sajong fall under the East District and no error emanates in the issuance of the COIs by the East District Authority under whose jurisdiction both the above mentioned Gram Panchayats fall. The COI issuing Authorities also raised no objection in this context at the time of issuance of the COIs. That, the Notification dated 22-11-1995 (*supra*) was partially amended on 27-09-1996 vide Notification No.57/Home/96 where *inter alia* the words "after proper police verification" in Paragraph 1 were inserted after the words "with such recommendations". Thus, pursuant to the above modification, in addition to Panchayat recommendation, Police verification was also required for obtaining COI. The Notification did not mention the particular branch of the Police Department to which the task of such verification was entrusted, all that the Notification required was verification by the Police, irrespective of the branch. That, in the Petitioners' case, the Special Branch of the Police Department had carried out the

verification and submitted their report to the Authorities issuing the COI, who on due consideration of the report along with the Panchayat recommendation, issued the COI to the Petitioners No.1 to 6. That, when the Special Branch undertook the verification, they were aware that Gumaney Kami was from Sajong and that the Panchayat recommendation had been obtained by the Petitioner No.1 from Naitam-Nandok Block, which the Police did not consider irregular or erroneous. No reasons have been forwarded by the Respondents No.5 and 6 or for that matter by the State-Respondents as to why the verification of the Special Branch of the Police Department, a State Agency, should be disbelieved at this juncture when it was considered valid at the relevant time of issuance of COI. Further, on the loss of the COIs the documents were reissued to the Petitioners No.1 to 6 on 27-12-2007 without any qualms or allegations of fraud. Learned Senior Counsel also sought to clarify that the Petitioner No.1 in the year 2011 obtained his Aadhaar Card, where his date of birth is recorded as "10-02-1949" which is his actual date of birth, which was erroneously shown as "39 years" in the year 1998 instead of "49 years". The error occurred for the reason that the Petitioner is an illiterate villager.

(ii) That, the Respondent No.5 alleged that there was variation in the titles of the Petitioner No.1 and his alleged progeny, as their surnames were variously recorded as 'Kami', 'Biswakarma', 'Rasaily'. It was urged that 'Kamis' are also known as 'Biswakarma', 'Lohar' or 'Sunar' and use surnames interchangeably which has withstood the test of the Panchayat recommendation and Police verification. The allegation of the

Respondent No.5 is thus erroneous, presumably based on lack of knowledge. That, given that Respondent No.5 is only 42 years of age it is unbelievable that she was aware of the facts as given in her Counter-Affidavit. In the verification clause she has stated that the contents of her Counter-Affidavit are true to the best of her knowledge without disclosing the source of her information.

(iii) That, the Respondent No.6 is a resident of Swayem, North Sikkim, but set out maliciously to gather information about Late Gumaney Kami who hailed from Sajong Rumtek in the East District, which indicates his *mala fides*. The Respondent No.6 is aged about 32 years, but he claims to have knowledge of the alleged fact that Gumaney Kami was born in 1925, had a younger brother and left his native village at around 45 years of age in search of work and stayed at Bhusuk Busty, Sikkim where he subsequently died. He has not revealed his source of information. That, such facts cannot be to his knowledge. It was alleged by the Respondent No.6 that many others have obtained COI impersonating themselves as the sons of Gumaney Kami when such facts have no relevance to the instant Writ Petition.

(iv) It was next contended that a perusal of the impugned Order dated 17-12-2019 nowhere divulges that Respondent No.3 had made over a copy each of the Complaints to the Petitioner No.4 to enable him to effectively defend the Petitioner's case thereby casting aside the principles of natural justice. The Petitioner No.4 who appeared on behalf of the Petitioner No.1 was not even represented by a Counsel which fact was ignored by Respondent No.3 who passed the impugned Order without considering that the documents of the Petitioner No.1 had already

passed the dual tests of Panchayat recommendation and Police verification and instead relied on the unsubstantiated allegations of Respondents No.5 and 6, with no new facts brought to the fore by them. That, the Counter-Affidavit filed by the State-Respondents indicates that Gumaney Kami was born in the year 1925 and the names of his daughters are also recorded in the same document (Annexure R4/4) thereby providing proof of his marriage contrary to the allegation of Respondent No.6 that he was unmarried. The Respondent No.3 categorised the Petitioner's octogenarian witness as unreliable on grounds that he fumbled with facts, however his statement to Respondent No.3 regarding ownership of land by Gumaney Kami at Sajong was substantiated by Annexure P19, which revealed such ownership, thus proving the bias attitude of Respondent No.3 who for his part exceeded his jurisdiction by threatening to penalize the witness, for collusion with the Petitioners, when such collusion was not established. That, the Respondent No.3 also acted beyond his jurisdiction in visiting the "Panchayat Ghar", at Sajong on 24-09-2019, to examine witnesses when no such procedure is contemplated in the Notifications pertaining to issuance of COI. Respondent No.3 could not act as an Investigator, Prosecutor and the Judge in the matter while at the same time affording no opportunity to the Petitioner to cross-examine the witnesses thereby revealing malice in law. The evidence of all four witnesses examined by Respondent No.3 are unreliable as according to them Gumaney Kami had no landed property which is belied by Annexure P19. That, the other witnesses examined by Respondent No.3 sought to prove that Gumaney Kami was unmarried and had no landed property all of

which are belied by documentary evidence which establishes to the contrary. That, these circumstances are indicative of the *mala fides* of the Respondent No.3 amounting to legal malice. Reliance on this aspect was placed on ***State of A. P. and Others vs. Goverdhanlal Pitti***¹.

(v) It was also contended that the impugned Order reflects that the former Panchayat Members of Gnathang denied having issued the recommendation but Annexures R6/20 and R6/21 wherein the Panchayat had stated that their signatures obtained on the residential/declaration certificate was forged reveals that a copy of the forged document was enclosed. This information in fact pertained to one Shri Sundas but the document said to have been enclosed was concealed by Respondent No.3, indicating *mala fides* and false implication of Petitioner No.1 in the case.

(vi) In the final leg of his arguments, Learned Senior Counsel contended that a WP(PIL) 06 of 2015 was filed by one Biraj Adhikari for reasons already elucidated (*supra*). The State-Respondents No.1 to 3 therein by filing Affidavit dated 16-04-2016 *inter alia* specified the manner in which they proposed to verify the alleged COIs. A Commission headed by Hon'ble Shri Justice Malay Sengupta (Retired) for the above purpose was constituted by the State Government. The Commission duly submitted its Final Report wherein it was found that the COI of the Petitioner No.1 was also included in 31,188 fake cases of COI and found mention at Serial No.755 , at Page 48 as established by Annexure P12. The COI of Petitioner No.1 having thus been subjected to verification, in the 'Remarks' column it was recorded as "verified and found

¹ (2003) 4 SCC 739

correct". The Additional District Collector, Respondent No.3 vide letter dated 01-08-2018, Annexure P11, forwarded the final report of verification conducted by the Commission, to the Secretary, Land Revenue and Disaster Management Department, Respondent No.2. The Report was accepted by the State Government and filed before this Court on 02-11-2018 in the said PIL.

(vii) That, now the matter having been given a closure is being re-agitated on Complaints against the Petitioners based on envy, on the success of the Petitioner No.4, presently the Panchayat President of 51 Kyongnosla Gram Panchayat Unit from where he has been Panchayat President for two terms from the year 2012 till date. Thus, the Petitioners' rights guaranteed under Articles 14 and 21 of the Constitution of India have been violated due to a departure from the due process of law. That, the impugned Order dated 17-12-2019 is bad in law as the principles of natural justice have not been complied with, the Petitioners having been deprived of an opportunity to put forth their case or cross-examine witnesses examined by Respondent No.3. That, the findings in the impugned Order that the Petitioner No.1 is not the natural or biological son of Late Gumaney Kami is devoid of any evidence. That, the impugned Orders dated 17-12-2019 and 13-10-2020 are manifestly erroneous passed without jurisdiction, illegal and not in consonance with the Rules and Government Notifications governing the same, hence, the prayers in the Writ Petition be granted.

8. Learned Additional Advocate General repudiating the contentions *supra*, reiterated the facts as narrated in the Counter-Affidavit and urged that the Notification of the Home Department

bearing No.119/Home/2010, dated 26-10-2010, provides that; the Authority issuing the COI is also authorized to cancel it, if it has been obtained by misrepresentation or suppression of material facts. An appeal lies to the Secretary, Land Revenue and Disaster Management Department, for redressal within one month of cancellation or refusal to grant COI. That, Annexure P10 the impugned Judgment/Final Order dated 13-10-2020 reveals that the Petitioners only sought for a “stay of the operation” of the impugned Order dated 17-12-2019 and maintenance of status quo on the COIs of the Petitioner No.1 and his sons. No prayer was made against the order of cancellation of the COI, hence on this count the Petitioners are required to exhaust the remedy of the Appellate Forum before approaching this Court. In this context, reliance was placed on the Judgment of this Court in ***The Gangtok Municipal Corporation vs. Union of India and Others***² and, ***Commissioner of Income Tax and Others vs. Chhabil Dass Agarwal***³. Learned Additional Advocate General also placed reliance on ***Hari Vishnu Kamath vs. Ahmad Ishaque and Others***⁴. That, the Petitioners in the prayers in their Writ Petition also did not seek the setting aside of the impugned Orders dated 17-12-2019 and 13-10-2020. That, when such prayers have not been included in the Petition by the party then the Court cannot grant reliefs which are not sought for. In this context, reliance was placed on ***Krishna Priya Ganguly etc. etc. vs. University of Lucknow and Others etc.***⁵.

9. While also reiterating the averments made in his Counter-Affidavit Learned Legal Aid Counsel for the Respondent

² WP(C) No.38 of 2019 decided on 22-10-2021

³ (2014) 1 SCC 603

⁴ AIR 1955 SC 233

⁵ AIR 1984 SC 186

No.6 contended that six families have made the COIs from Gumaney Kami, but each family is unknown to the other. When the COI was issued to the Petitioner No.1 the first recommendation was obtained from the Naitam-Nandok Block Panchayat, whereas the other Petitioners obtained the recommendations from Gnathang Gram Panchayat which renders the act suspicious. That, Annexure R6/19 reveals that the Petitioner No.1 had nine children wherein some have applied for COI and others have not, this too raises doubts about the Petitioners and their origins. That, discrepancies found in the documentary evidence are alarming in nature and therefore it is clear that the Petitioners have not come with clean hands. That, the recommendation and the verification for the purpose of granting COI to the Petitioners was erroneous. He further submits that Annexure R6/40 which is the list of doubtful cases of COI also bears the name of the Petitioner No.1 at Serial No.5354 and the Petitioners No.2 to 6. That, when the list was prepared the Petitioners No.2 to 6 had not obtained their COIs, but it was obtained by them on 30-08-2006 and 31-08-2006.

10. Learned Counsel for the Respondent No.5 endorsed the submissions made by Learned Additional Advocate General and Learned Legal Aid Counsel for the Respondent No.6 and had no submissions to further augment the above.

11. In rebuttal, Learned Senior Counsel for the Petitioners while contesting the claim of the Learned Additional Advocate General that Writ Petition cannot be filed without exhausting the statutory forum placed reliance on ***S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar and Others***⁶. While repudiating the submission of

⁶ (2004) 7 SCC 166

Additional Advocate General that there was no prayer for setting aside the impugned Order of Respondent No.3, strength was drawn from the ratio in ***Union of India and Others vs. Tania Construction Private Limited***⁷ which laid down the principles for interpretation of a document, that the document is to be read holistically. Reliance was also placed on ***B. K. Muniraju vs. State of Karnataka and Others***⁸ on this count. It was urged that the grounds set out in the Writ Petition all seek setting aside of the impugned Order of the Additional District Collector. Placing reliance on ***Lt. Governor, Delhi and Others vs. HC Narinder Singh***⁹ and ***State of Andhra Pradesh and Others vs. Chitra Venkata Rao***¹⁰ it was argued that the Petitioners cannot be penalized twice as the verification conducted by the Police and by a Commission comprising of a retired High Court Judge established the *bona fides* of the Petitioners and was accepted by the Government, which Respondent No.3 ignored while issuing the impugned Order dated 17-12-2019.

12. Having heard the Learned Counsel for the parties *in extenso*, perused all averments and documents and citations made at the Bar, the question that requires consideration by this Court is;

- (i) *Whether the impugned Order dated 17-12-2019 passed by the Respondent No.3 cancelling the COIs of the Petitioners and the impugned Judgement/Final Order dated 13-10-2020 passed by the Respondent No.2 upholding the impugned Order of Respondent No.3 are illegal, arbitrary, erroneous, without jurisdiction and in violation of the principles of natural justice?*

⁷ (2011) 5 SCC 697

⁸ (2008) 4 SCC 451

⁹ (2004) 13 SCC 342

¹⁰ (1975) 2 SCC 557

13. In the first instance, it is relevant to recapitulate that in exercise of its extraordinary power of superintendence and/or judicial review under Articles 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which goes to the root of the decision; perversity or unreasonableness; violation of the principles of natural justice, lack of jurisdiction and usurpation of powers or if the conclusion made by the authorities on the very face of it is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion or grounds very similar to the above. In ***Shri Ambica Mills Co. Ltd. vs. Shri S. B. Bhatt and Another***¹¹ it was propounded that it is well-settled that a Writ of Certiorari can be issued not only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. It is not the function of the High Court in a Petition for a Writ under Article 226 of the Constitution to review, re-assess or re-analyse the evidence and to arrive at an independent finding on the evidence. On the parameters of the principles etched out *supra*, the instant matter is being examined.

14. In order to comprehend what the much disputed Certificate of Identification (COI) is, it is relevant to clarify here that in the erstwhile Kingdom of Sikkim under the Sikkim Subjects Regulation 1961 certain persons domiciled in the territory of Sikkim at the commencement of the Regulation and some others, contingent upon certain caveats, could be Sikkim Subjects. Post merger of Sikkim into the Indian Union a Memorandum dated 25-09-1976 came to be issued wherein to ascertain the residential

¹¹ AIR 1961 SC 970

qualification of candidates who claimed to be 'locals', for the purposes of employment, it was decided that the candidates should be able to 'maintain' whether their parents name had been recorded on or before 15-05-1975 in the relevant Government Register. The Government Register is presumably the Sikkim Subject Register. Following the Memorandum of 25-09-1976, Notifications dated 28-01-1980, 09-04-1981 and Circular dated 17-03-1987 were issued on the subject of identification and residential status of persons residing in Sikkim, empowering the Authorities who were to issue domicile/residential certificate to such residents, subject to fulfillment of conditions laid down therein. On 22-11-1995 the State Government in supersession of all previous Memoranda and the Circular of 1987 authorized the officials mentioned therein to issue COI to the following categories of persons;

1. A person whose name is found recorded in the Old Sikkim Subject Register or
2. A person whose name is not found registered in the Old Sikkim Subject Register but he/she has established beyond doubt that the name of his/her father/husband/paternal grandfather/brother from the same father has been recorded in the Old Sikkim Subject Register or
3. A person who has or had agricultural land in rural areas and has been ordinarily residing in the State of Sikkim or
4. A person who is holder of Indian Citizenship Certificate issued by the District Collector, Government of Sikkim under the Sikkim (Citizenship) Order, 1975 as amended vide the Sikkim (Citizenship) Amendment Order, 1989 or
5. A person whose father/husband has/had been in Sikkim Government Service on or before 31.12.1969. Certificate or Identification obtained by such persons shall be for the purpose of employment only.

It is the COIs which were issued to the Petitioners that were under challenge before the Respondent No.3 and Respondent No.2 on Complaints filed by Respondents No.5 and 6.

15. Indubitably, Notification No.66/Home/95, dated 22-11-1995, of the Home Department, authorized the District Collector, Sub-Divisional Officers and Revenue Officers within their respective jurisdiction to issue COI to the persons falling in the different categories as detailed in the Notification, on the recommendation of the Gram Panchayat and on the issuing authority being satisfied with such recommendation. By a partial modification of this Notification, by a Notification bearing No.57/Home/96, dated 27-09-1996, the words "Sub-Divisional Officers and Revenue Officers" were substituted by the words "Additional District Collectors". In other words, in place of the Sub-Divisional Officers and the Revenue Officers who were by the Notification of 22-11-1995 authorised to grant COI along with the District Collectors were replaced by the Additional District Collectors. The modifying Notification also inserted the words "after proper police verification" in Paragraph 1 after the words "with such recommendations". Henceforth, in terms of the Notification dated 27-09-1996, the authorities authorized to grant COI would be the District Collectors and the Additional District Collectors. They were to issue COIs to applicants on the recommendations of the Gram Panchayat and on being satisfied with such recommendations. The Panchayat recommendation was to be followed by proper Police verification. Appositely, at this juncture, as pointed out by Learned Senior Counsel for the Petitioners, the specific branch of the Police Department which was to carry out the proper Police verification

has not been mentioned in the Notification. Thus, the Notification leaves it open for any branch of the Police Department to carry out the Police verification, though it is undisputed that presently the Police verification for such purposes are being carried out by the Special Branch as was done by this branch also in the case of the Petitioners. Vide a Notification dated 25-01-2006, bearing No.04/HOME/2006, in partial modification again to the Notification dated 22-11-1995, the District Officers were authorized to issue COI only to direct descendants of SCC/COI holders appearing in the updated list, while all "other requests" for issuance of COI was to be forwarded to the Head Office for consideration after completion of field verification as usual. A Committee consisting of the Secretary, Home Department; Secretary, Department of Personnel, Administrative Reforms and Training (DOPART); Secretary, Law; Secretary, Urban Housing and Development Department (UD&HD); Secretary, Land Revenue and Disaster Management Department (LR&DM), was constituted, who were to consider applications and accord approval for award of COI in "other" cases.

16(i). That the Gram Panchayats were clothed with the powers to issue recommendations for issuance of COI is not in dispute. In this context, it may be noted that in 1992 the Constitution (Seventy-third Amendment) Act was introduced in Parliament and the existing Part IX was substituted. The background in which this amendment was introduced can be culled out from the Statement of Objects and Reasons, Paragraphs 1 and 2 thereof which read as follows;

"1. Though the Panchayati Raj institutions have been in existence for a long time, it has been observed that these institutions have not been able to acquire the status and dignity of viable and

responsive people's bodies due to a number of reasons including absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources.

2. Article 40 of the Constitution which enshrines one of the directive principles of State policy lays down that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. In the light of the experience in the last forty years and in view of the shortcomings which have been observed, it is considered that there is an imperative need to enshrine in the Constitution certain basic and essential features of Panchayati Raj institutions to impart certainty, continuity and strength to them."

(ii) Articles 243(d) and 243G of the Constitution provides as follows;

"**243. Definitions.**—In this Part, unless the context otherwise requires,—

.....
 (d) '**panchayat**' means an institution (by whatever name called) of self-government constituted under Article 243B, for the rural areas;

243G. Powers, authority and responsibilities of Panchayats.—Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority and may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

....." **[emphasis supplied]**

(iii) The above exercise is being undertaken to establish that the Panchayat is a Village Level Constitutional Body and will expectedly function as such. In the instant matter when the recommendation of the Panchayat is given to an applicant for COI, it is presumed that they have carried out their functions with the responsibilities entrusted to them, without fear or favour or for that matter ill-will. Recommendations have been issued by the Gram

Panchayat of Naitam-Nandok in 1998 to the Petitioner No.1 when he applied for COI as he was a resident of Bhusuk, which fell under that Panchayat Unit and by the Gram Panchayat of Gnathang in 2006 to the Petitioners No.2 to 6 who at the relevant time were residing there. It is assumed that the Panchayat Members of the concerned Blocks issued the recommendations on being satisfied with the enquiries made by them or on their own knowledge. The State-Respondents have not enlightened this Court as to how the enquiries are made prior to issuance of Panchayat recommendations. Patently, the Panchayat recommendation is followed by Police verification. The Police Department is an organ of the State Government which is entrusted *inter alia* with law and order and also with setting the criminal justice system into motion. It is assumed that when they function they have the wherewithal to carry out the Police verification that is required by the Notifications *supra*. The verification expectedly would be incisive and conclusive. That having been said, notwithstanding such procedure comprising of Gram Panchayat's recommendation and the Police verification and the Petitioners having been found to be Sikkimese and thereby entitled to COIs in terms of the Notification *supra*, the impugned Orders were issued by Respondent No.3 and Respondent No.2 without discussing in their Orders as to why the recommendations and Police verification were not worth considering and why the authorities who issued such recommendation and verification were not reliable.

17(i). On this count, it is relevant to notice that before this Court a Writ Petition in the nature of Public Interest Litigation was filed on 28-09-2015 by one Biraj Adhikari seeking an enquiry into

and cancellation of 31,180 fake cases of COI. The Writ Petition was registered as WP(PIL) No.06 of 2015 and considered by a Division Bench of this Court on which Notice was issued to the State-Respondents numbering 1 to 9 therein and the Central Government as Respondent No.10. Admittedly, the State-Respondents in an Affidavit filed on 16-04-2016 detailed the specifics according to which they proposed to verify the alleged fake COIs. In Paragraph 3 of its Affidavit therein, the State-Respondents averred as follows;

“3. It is submitted that in order to carry out the scrutiny of 31,180 doubtful cases of Sikkim Subject Certificate/Certificate of Identification, **the records maintained in the District Collectors Office shall be obtained. The details mentioned by the applicants in their applications for grant of Certificate of Identification will be verified from the original register maintained in the Respondent No.3 Department.** It is further submitted that from the list of 31,180 doubtful cases, **if cases are found to be doubtful in the scrutiny, the same shall be referred to the concerned District Collector for further enquiry and cancellation,** if necessary, in accordance with the Notification No.119/Home/2010 dated 26/10/2010.
.....” [emphasis supplied]

(ii) Pursuant thereto, the Division Bench vide its Order dated 20-06-2016 observed as follows;

“15. In the above facts and circumstances, we deem it appropriate to direct the Respondents to carry out scrutiny and enquiry in the manner contained in paragraph 3 of affidavit dated 16.04.2016 (supra). And we do it accordingly. Needless to say that the District Collectors shall make enquiry strictly in accordance with law.”

(iii) On 24-08-2017, the Court again ordered as follows;

“3. We have examined all the issues at length. **We grant 3 (three) weeks’ time to the State Government to consider appointment of an independent Agency under the Chairmanship of a retired High Court Judge for the purpose of verification of fake Sikkim Subject Certificates/ Certificate of Identifications and for issuance of Certificate of Identifications (COIs) in the smart card format which would contain all necessary details for instant verification.**” [emphasis supplied]

(iv) This Order of the High Court was followed by a Notification of the State Government dated 04-09-2017, bearing No.39/Home/2017, which constituted a Commission headed by Hon'ble Mr. Justice Malay Sengupta (Retd.) with the following terms of reference;

- (i) It shall inquire into allegations of issue of doubtful/fake Certificate of Identification.
- (ii) To recommend issuance and digitization of Certificate of Identification in the smart card format containing relevant information.
- (iii) The Commission will submit its report within three months from the date of issue of the notification constituting the Commission.
- (iv) The Commission may adopt its own procedure for performance of its functions.

(v) Evidently the scrutiny was carried out by the concerned Commission which submitted its Report, dated 18-08-2018, to the State Government. The State Government accepted the Report on 27-09-2018. In view of the Affidavit submitted by the State-Respondents on 16-04-2016 which is extracted hereinabove, it is safely assumed that during the process of verification the records of the 31,180 doubtful cases of SSCs/COIs were obtained from the Office of the District Collectors of the various Districts. It is also presumed that the details mentioned by the applicants in their applications for grant of COI were verified from the original Register maintained in the Department of the Respondent No.3. It is further presumable that as undertaken by the State-Respondents if cases were found to be doubtful on scrutiny, in the list of 31,180 doubtful cases they would be referred to the concerned District Collector for further enquiry and cancelled, if necessary, in terms of the Notification bearing No.119/Home/2010 dated 26-10-2010. That, as the Additional District Collector was

also authorized to issue COI along with the District Collector it is further presumed that every Additional District Collector of every District in Sikkim was taken into confidence when the scrutiny was undertaken and was in the know of the said exercise. In the teeth of such Panchayat recommendations, which is, as already pointed out, a Constitutional Authority, the Police verification and the Report submitted by the Commission headed by no less than a retired High Court Judge, Respondents No.1 to 4 in their joint Counter-Affidavit, dated 20-04-2021, affirmed by Respondent No.3, filed before this Court in the instant matter averred as follows;

"25. That with reference to the statements contained in para 41 of the writ petition, **it is vehemently denied that this answering respondents while passing of their respective impugned orders completely ignored the findings of the Final Report dated 18.08.2018 of the Commission of Hon'ble Mr. Justice Malay Sengupta (retd.) which had been accepted by the State Government and submitted to this Hon'ble Court in PIL of 2015. It is further denied that the Respondent No 3 also did not rely on official records of previous police verification reports and recommendation of Garm Panchayat and instead chose to rely on oral statements of the complainants respondent no.5 and 6 without any material proof or bias.**

It is humbly submitted that the impugned order dated 17th December, 2019 passed by Respondent No.3 and the Order dated 13th October, 2020 passed by the Respondent No.2 was well within the parameters as set out in the facts of the case coupled with law."

[emphasis supplied]

(vi) Thus, the Respondent No.3 while denying in totality that it had not ignored the previous Panchayat Reports, Police verification and the Report of the Commission headed by a retired High Court Judge nevertheless failed to detail how all of the above had been considered by him as the impugned Order dated 17-12-2019 bears no such details of consideration. Despite the system of

checks and balances elucidated above, the Respondent No.3 in his lone wisdom decided to pass the impugned Order disregarding all. It is to be noticed that the Final Report of the verification carried out by the Commission headed by a retired High Court Judge came to be filed before this Court on 02-11-2018 and taken on record on 03-12-2019.

18. At this juncture, it may relevantly be pointed out that Article 215 of the Constitution reads as follows;

"215. High Courts to be courts of record.— Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

Thus, it is clear that Constitutional Courts being courts of record, have the authority under its plenary jurisdiction to peruse the orders passed by it in a previous matter to prevent miscarriage of justice. In **Supreme Court Bar Association vs. Union of India and Another**¹² it was observed that a Court of record is a Court the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any Court. That clears the air pertaining to references made herein to the case of Biraj Adhikari being WP(PIL) No.06 of 2015.

19. Reverting back to the Report of the Commission, as pointed out by Learned Senior Counsel for the Petitioners, admittedly the name of the Petitioner No.1, Bhim Bahadur Biswakarma Kami, finds mention at Serial No.755, Page 48 of the Final Report, submitted by the Commission on completion of its verification. In the 'Remarks' column against his name, undisputedly it has been recorded as "verified and found correct". In other words, the details with regard to the obtainment of COI by

¹² (1998) 4 SCC 409

Petitioner No.1 was verified by the Commission and found to be correct. The Report of the Commission at Paragraph 4.1 reads as follows;

"4.1. Therefore, it is the finding of the Commission that of the 31188 listed persons it is found that the list includes a number of unverified cases most of which may include genuine cases but on account of lack of verification by the person(s) concerned have been categorised as 'reported false cases'. **The Commission thus concludes that in view of the fact that out of 8378 cases verified by the District Collectors so far, none were reported to be 'fake' as alleged.**"

[emphasis supplied]

In light of this circumstance, it thus stands to reason that his verification and scrutiny of the COI of Petitioner No.1 fell within the number of 8,378 persons whose COIs were verified his Serial being 755 at Page No.48 and his COI found to be correct. In other words, there was no falsity in its obtainment. This Report and the Remarks *supra* lends credence to the submissions of the Learned Senior Counsel for the Petitioners that the COI of the Petitioner No.1 on scrutiny by the Commission constituted for the purpose was not found to be fake.

20. Despite the facts and circumstances narrated hereinabove, it is seen that the Respondent No.5 filed a Complaint on 29-08-2018 and the Respondent No.6 filed a Complaint on 04-09-2018, as already detailed in the foregoing Paragraphs, against the Petitioners when the PIL was before the Division Bench of this Court. The Respondents No.2 and 4 herein were in seisin of the fact of the PIL filed before this Court and in fact assisted in the scrutiny of the alleged fake COIs in terms of the Affidavit submitted by the State-Respondents and Respondent No.3 vide its letter dated 01-08-2018 and forwarded the final report to Respondent No.2. Thus, both Respondents No.2 and 3 were seemingly aware

of the contents of the Final Report. The filing of these Complaints and the registration of the case by Respondent No.3 was not brought to the notice of this High Court, a Court of competent jurisdiction.

21. The impugned Order dated 17-12-2019 of the Respondent No.3 reflects that during the pendency of the WP (PIL) before this Court, parallel proceedings with regard to Complaints filed by the Respondents No.5 and 6 were being carried out inasmuch as Respondent No.3 embarked on an examination of witnesses on 24-09-2019. Upon disposal of the PIL on 03-12-2019, the impugned Order dated 17-12-2019 came to be issued followed by the impugned Judgment/Final Order dated 13-10-2020.

22. It is settled law that parallel remedies in respect of the same matter cannot be pursued at the same time. In *State of Andhra Pradesh vs. Raghu Ramakrishna Raju Kanumuru (M.P.)*¹³ the Supreme Court considered the matter in which a Writ Petition being WP(PIL) No.241 of 2021 had been filed on 08-12-2021 before the High Court of Andhra Pradesh at Amaravati, which on 16-12-2021 directed construction activities in the concerned Project to be undertaken strictly in accordance with the permission accorded by the concerned Ministry. However, the Respondent had addressed a letter to the NGT on 31-10-2021 and the NGT taking cognizance of the letter initiated proceedings in O.A. No.361 of 2021. The NGT appointed an Experts Committee on 17-12-2021 which submitted its report on 29-03-2022 and did not find any violation in the construction carried out by the Appellant. The NGT

¹³ 2022 SCC OnLine SC 728

vide its Order dated 06-05-2022 appointed a 2nd Experts Committee, the report of which was awaited. However, without waiting for the Report, vide the same Order NGT directed that no further construction was to be undertaken. It was argued on behalf of the Appellant that the High Court of competent jurisdiction was already in seisin of the matter, therefore, the NGT could not have entertained a lis with regard to the same cause of action. The Supreme Court held that it was not appropriate on the part of the NGT to have continued with the proceedings before it, specifically when it was pointed out that the High Court was also in seisin of the matter and had passed the interim order permitting the construction. It was observed that there can be no manner of doubt that in such a situation, it is the Orders passed by the Constitutional Courts, which would be prevailing over the Orders passed by the Statutory Tribunals. Thus, the proceedings pending before the Learned NGT were quashed and set aside. In ***Arunima Baruah vs. Union of India and Others***¹⁴ the Supreme Court referred to the ratio in ***Jai Singh vs. Union of India and Others***¹⁵ where it was specifically laid down that the Court would not ordinarily permit a party to pursue two parallel remedies in respect of the same subject-matter. In ***Jai Singh (supra)*** the Supreme Court also observed that after the dismissal of the Writ Petition the Appellant had filed a suit in which he had agitated the same question which was the subject-matter of the Writ Petition. The Supreme Court opined that the Appellant cannot pursue two parallel remedies in respect of the same matter at the same time.

¹⁴ (2007) 6 SCC 120

¹⁵ (1977) 1 SCC 1

23. Relevant reference may also be made to *J. Chitra vs. District Collector and Chairman, State Level Vigilance Committee, Tamil Nadu and Others*¹⁶. A Writ Petition before the Supreme Court was filed by the Appellant challenging the Order dated 09-04-2008 passed by the Chennai District Vigilance Committee cancelling her Community Certificate. The Writ Petition was dismissed by the High Court of Madras by a Judgment dated 22-12-2008, aggrieved by which the Appeal was filed. The Appellant had been issued a Community Certificate on 28-08-1992 showing that she was from the Valluvan Community, a Scheduled Caste. A Complaint was preferred by Dr. Ambedkar Service Association to the Office of the Accountant General where she was employed, raising doubts about the Community Certificate produced by the Appellant at the time of joining service. The Appellant was directed to attend an enquiry to be conducted by the Collector regarding the genuineness of the Community Certificate. A Notice was issued by the District Collector, Chennai directing the Appellant to show cause as to why her Community Certificate should not be cancelled. The District Collector directed the Revenue Divisional Officer to conduct an enquiry. An enquiry was conducted by the District Vigilance Committee after which it expressed its view that the Appellant belongs to the said Community which is a Scheduled Caste. The service of the Appellant was regularized in the year 2000 and she was promoted in 2001. In the meanwhile, the said Dr. Ambedkar Service Association submitted another representation that suitable action should be taken against the Appellant for securing employment as reserved category candidate on the basis of a false

¹⁶ (2021) 9 SCC 811

Caste Certificate. The State Level Scrutiny Committee informed the Appellant of the Complaint received and directed her to be present for inquiry to be conducted on 24-03-2003. In the meanwhile, the District Vigilance Committees were reconstituted by the Government of Tamil Nadu on 06-07-2005. The State Level Scrutiny Committee remanded the inquiry pertaining to the Community Certificate of the Appellant to the District Vigilance Committee on 04-01-2006. The Appellant appeared before the District Vigilance Committee and attended the enquiry which, on 09-04-2008 cancelled the Community Certificate of the Appellant. Assailing the Order the Appellant was before the High Court of Madras which was dismissed by the High Court vide its Judgment. The Supreme Court on the Appeal filed by her held that;

"10. In the instant case, an enquiry was conducted by the District-Level Vigilance Committee which upheld the community certificate in favour of the appellant. The decision of the District-Level Vigilance Committee in the year 1999 has not been challenged in any forum. The recognition of the community certificate issued in favour of the appellant by the District Vigilance Committee having become final, the State Level Scrutiny Committee did not have jurisdiction to reopen the matter and remand for fresh consideration by the District-Level Vigilance Committee. The guidelines issued by G.O. No.108 dated 12-9-2007 do not permit the State Level Scrutiny Committee to reopen cases which have become final. The purpose of verification of caste certificates by Scrutiny Committees is to avoid false and bogus claims. Repeated inquiries for verification of caste certificates would be detrimental to the members of Scheduled Castes and Scheduled Tribes. Reopening of inquiry into caste certificates can be only in case they are vitiated by fraud or when they were issued without proper inquiry."

[emphasis supplied]

24. Similarly, in the instant case the Report submitted by the Commission headed by the retired High Court Judge, after scrutiny duly assisted by the District Collectors of the various Districts, accepted by the Government and placed before the Division Bench of this Court in the case of **Biraj Adhikari** (*supra*)

also attained finality as there was no challenge either to the findings of the Commission arrived at in its Final Report or the acceptance of it by the State Government as already discussed in detail hereinabove and no challenge arose also to the Police verification carried out for issuance of COIs to the Petitioners. Thus, the Respondent No.3 did not have any jurisdiction to reopen the matter and conduct an enquiry by himself besides being precluded from acting as the Investigator, Prosecutor and Judge.

25. On the bedrock of the above-mentioned ratiocinations when the Respondents No.3 and 4 being the concerned Authorities who were also a part of the process of scrutiny and verification of the alleged fake COI they could not have carried out parallel proceedings when a matter was pending in the High Court. It was in fact their bounden duty to have brought the pending Complaints to the notice of this Court when the PIL *supra* was being taken up for consideration. It is not the case of the State-Respondents that new facts were brought out by the Respondents No.5 and 6 or that fresh facts emerged against the Petitioners during the pendency of the Complaints which prompted a fresh enquiry into the matter. Verifications and re-verifications cannot be carried out repeatedly by the concerned authorities on the same matter, for the personal satisfaction of every disgruntled Complainant.

26. The Complaints of Respondents No.5 and 6 pivot around the allegation that the Petitioners obtained their COIs by misrepresentation of facts. It is relevant to notice that as pointed out by Learned Senior Counsel for the Petitioners the Respondent No.5 is aged about 42 years and claims to be well-acquainted with

the facts and circumstances of the case. In the Verification clause of her Affidavit she states as follows;

"I the abovenamed deponent do hereby states (sic) and solemnly affirm that the contents of this counter affidavit are **true to best of my knowledge and my respectful submissions before this Hon'ble Court.**

I sign this affidavit on this the 1st day of July 2021 at Gangtok, East Sikkim." [emphasis supplied]

Respondent No.6 who is aged about 32 years in the

verification clause of his Counter-Affidavit states as follows;

"I, the above named deponent verify and state that the statements made in paragraphs 1, 2, 5 to 30 **are true to my knowledge and belief, the statements made in paragraphs 30 to 37 are partly matters of records and partly submission**, that no part of it is false and nothing material has been concealed therefrom.

Affirmed on this the 6th day of July 2021 at Gangtok." [emphasis supplied]

27(i). On this facet, we may usefully look to the provisions of Order XIX Rule 3 of the Code of Civil Procedure, 1908 (hereinafter, "CPC") which provides as follows;

"3. Matters to which affidavits shall be confined.—(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.

(2)"

(ii) In *A. K. K. Nambiar vs. Union of India and Another*¹⁷ a Constitution Bench of the Supreme Court emphasized the importance of verification and opined that importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out whether it will be safe to act on such Affidavit evidence. In the said case, it was found that the Affidavits of all the parties suffer from the mischief of lack of proper verification with the

¹⁷ (1969) 3 SCC 864

result that the Affidavits would not be admissible in evidence. In ***Virendra Kumar Saklecha vs. Jagjiwan and Others***¹⁸ while considering an election petition dealt with importance of disclosure of source of information in an Affidavit. The Supreme Court held that the importance of disclosing such source was to give to the other side notice of the same and also give an opportunity to the other side to test the veracity and genuineness of the source of information. In ***M/s. Sukhwinder Pal Bipan Kumar and Others vs. State of Punjab and Others***¹⁹ a three Judge Bench of the Supreme Court while dealing with Petitions under Article 32 of the Constitution of India held that under Order XIX Rule 3 of the Code it was incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particulars. In a case where allegations in the Petition are not affirmed as aforesaid, it cannot be treated as supported by an Affidavit as required by law. In ***Barium Chemicals Ltd. and Another vs. Company Law Board and Others***²⁰ a Constitution Bench of the Supreme Court held that while answering the question as to what were the materials placed by the appellants in support of this case which the Respondent had to answer *inter alia* observed as follows;

“(57). **It is true that in a case of this kind it would be difficult for a petitioner to have personal knowledge in regard to an averment of mala fides, but then where such knowledge is wanting he has to disclose his source of information so that the other side gets a fair chance to verify it and make an effective answer.**” [emphasis supplied]

It was further observed that slipshod verifications of Affidavits might lead to their rejection and they should be modelled on the lines of Order XIX Rule 3 of the CPC and where an averment

¹⁸ (1972) 1 SCC 826

¹⁹ (1982) 1 SCC 31

²⁰ AIR 1967 SC 295

is not based on personal knowledge, the source of information should be clearly deposed.

(iii) It thus concludes that if a statement of fact is based on information the source of information must be disclosed in the Affidavit. The Affidavits filed by the Respondents No.5 and 6 before this Court fail to pass the test of Order XIX Rule 3 of the CPC and the tests laid down by the Supreme Court in the ratiocinations hereinabove. It was incumbent upon the deponents to clearly express how much of their statement of affidavit is a statement of their knowledge and how much is a statement on information and belief while also stating the sources and grounds of the information or belief with sufficient particulars. An Affidavit lacking such details cannot be accepted and no notice can be taken of such an Affidavit, similar is the fate of the Affidavits filed by Respondent No.5 and Respondent No.6.

28(i). Addressing the argument of Learned Additional Advocate General that the Petitioners ought to be directed to exhaust their alternative forum before approaching this Court for which he placed reliance on ***Chhabil Dass Agarwal (supra)*** where the Petitioner who was an income tax assessee, a non-Sikkimese residing in the State of Sikkim questioned the assessment order issued by the Assessing Officer by filing a Writ Petition. The High Court dealt with the matter on merits and set aside the assessment orders. The Supreme Court held that though vested with discretion to grant relief under Article 226 of the Constitution of India despite existence of an alternative remedy the High Court must not interfere if an adequate efficacious alternative remedy is available to the Petitioner unless an exceptional case warranting interference

is made out or sufficient grounds exist to invoke extraordinary jurisdiction under Article 226. Thus, invocation of the provision of Article 226 of the Constitution is to be taken up *inter alia* when exceptional or sufficient grounds exist to invoke the extraordinary jurisdiction. The order of the Hon'ble Supreme Court is not a blanket order prohibiting an aggrieved person to approach the High Court under Article 226 of the Constitution when a statutory remedy is available. In this context, in ***Harbanslal Sahnia and Another vs. Indian Oil Corpn. Ltd. and Others***²¹ the Supreme Court in a case where the High Court had taken a view that the remedy by the way of recourse to arbitration clause was available to the appellants and therefore the Writ Petition filed by the appellants was liable to be dismissed, observed that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the fundamental rights (ii) where there is failure of principles of natural justice or (iii) where the orders of proceedings are wholly without jurisdiction or the *vires* of an act is challenged.

(ii) In ***Radha Krishan Industries vs. State of Himachal Pradesh and Others***²² the Supreme Court went on to state that;

"27.3. Exceptions to the rule of alternate remedy arise where: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without

²¹ (2003) 2 SCC 107

²² (2021) 6 SCC 771

jurisdiction; or (d) the vires of a legislation is challenged.”

(iii) In *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*²³ the Supreme Court observed as follows;

“**15.** Under Article 226 of the Constitution, the High Court, **having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition.** But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

[emphasis supplied]

(iv) From the facts and circumstances of the matter at hand, it is evident that the Respondent No.3 has exercised authority exceeding its jurisdiction, the Petitioners have also made out a case of violation of the principles of natural justice on account of non-furnishing of Complaints to them, lack of an opportunity to put forth their own case and to cross-examine the witnesses and for enforcement of fundamental rights as envisioned under Articles 14 and 21 of the Constitution, thereby warranting interference of this Court under its extraordinary jurisdiction under Article 226 of the Constitution of India. It goes without saying that the discretion to exercise the jurisdiction or not lies with the Court and cannot be contingent upon the diktat of any party.

29. The argument of Learned Additional Advocate General that there was no prayer for setting aside the Order of the

²³ (1998) 8 SCC 1

Respondent No.3 and therefore the Petitioners should be sent back to exhaust the remedy provided in the forum cannot be countenanced as on consideration of the pleadings it emerges with clarity that the Petitioners are aggrieved by the cancellation of their COIs and in the 'Grounds' pleaded by them at Paragraph (xv) of their averments it has been specified that the impugned Orders dated 17-12-2019 and 13-10-2020 cancelling the COIs of the Petitioners are patently and manifestly erroneous without jurisdiction, illegal and not in consonance with the Rules and Government Notifications governing the same and are liable to be quashed and set aside. The averments indeed have to be considered holistically and not in isolation. Presumably, it is an error in drafting whereby such prayer for setting aside the impugned orders was not inserted in the Prayer portion or in the prayers before the Respondent No.2. An error in drafting cannot translate into denial of rights. On this facet, it is worth observing that in ***Dwarka Nath vs. Income-tax Officer, Special Circle, D Ward, Kanpur and Another***²⁴ the Supreme Court held that High Courts can issue directions, orders or writs other than the prerogative writs. It enables the Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. In ***M. Sudakar vs. V. Manoharan and Others***²⁵ the Supreme Court has also held that the power to mould relief is always available to the Court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief depending upon the facts and circumstances of the case. In the facts of a given case, a Writ Petitioner may not be entitled to the specific relief claimed by him,

²⁴ AIR 1966 SC 81

²⁵ (2011) 1 SCC 484

but this itself will not preclude the Writ Court to grant such other relief which he is otherwise entitled. Hence, although there may be no specific prayer but the Court is of the opinion that to meet the requirements and to do complete justice in the matter, the relief can be moulded by the Court.

30. In light of the foregoing discussions it concludes that;

- (i) *The COIs of all the Petitioners are found to be legal, correct and valid in terms of the Final Report of the Commission headed by Hon'ble Shri Justice Malay Sengupta (Retd.) dated 18-08-2018, submitted to the State Government on 01-09-2018 and accepted by it on 27-09-2018 and thereafter filed by the State Government before the Division Bench of this Court on 02-11-2018 in WP(PIL) No.06 of 2015.*
- (ii) *Consequently, the impugned Order dated 17-12-2019 of Respondent No.3 whereby the COIs issued to each of the Petitioners were cancelled and the impugned Order dated 13-10-2020 of the Respondent No.2, which upheld the impugned Order of Respondent No.3 dated 17-12-2019, are set aside and quashed, both being illegal, arbitrary in violation of the principles of natural justice and lacking jurisdiction.*
- (iii) *No further effect shall be given to the operation of the said impugned Order of Respondent No.3 dated 17-12-2019 and of Respondent No.2 dated 13-10-2020.*

31. The Writ Petition stands disposed of accordingly.

32. No order as to costs.

(Meenakshi Madan Rai)
Judge

08-07-2022

Approved for reporting : **Yes**