

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.A. No. 05 of 2022

Nim Pincho Bhutia aged about 32 years,
S/o Kancha Bhutia,
R/o Swayem,
Sikkim.

..... Appellant

versus

1. Bhim Bahadur Rasaily/Kami aged about 71 years,
R/o 4th Mile, J.N. Road,
P.O. Kyongnosla - 737102, Sikkim.
2. Gyan Bahadur Rasaily aged about 48 years,
S/o Bhim Bahadur Rasaily,
R/o 4th Mile, J.N. Road,
P.O. Kyongnosla - 737102, Sikkim.
3. Nanda Kumar Rasaily aged about 40 years,
S/o Bhim Bahadur Rasaily
R/o 4th Mile, J.N. Road,
P.O. Kyongnosla - 737102, Sikkim.
4. Indra Kumar Rasaily aged about 39 years,
S/o Bhim Bahadur Rasaily,
R/o 4th Mile, J.N. Road,
P.O. Kyongnosla - 737102, Sikkim.
5. Dhan Bahadur Rasaily aged about 36 years,
S/o Bhim Bahadur Rasaily,
R/o 4th Mile, J.N. Road,
P.O. Kyongnosla - 737102, Sikkim.
6. Dil Bahadur Rasaily aged about 35 years,
S/o Bhim Bahadur Rasaily,
R/o 4th Mile, J.N. Road,
P.O. Kyongnosla - 737102, Sikkim.
7. State of Sikkim,
Through the Chief Secretary,
Government of Sikkim,
Gangtok – 737101, Sikkim.
8. The Secretary,
Land Revenue Department,
Government of Sikkim,
Gangtok – 737101, Sikkim.

**W.A. No. 05 of 2022 Nim Pincho Bhutia vs. Bhim Bahadur Rasaily/Kami & others &
W.A. No. 07 of 2022 State of Sikkim & ors. vs. Bhim Bahadur Kami (Biswakarma) &
others**

9. The District Collector,
District Administrative Centre,
Gangtok – 737101, Sikkim.
10. The Additional District Magistrate,
District Administrative Centre,
Gangtok – 737101, Sikkim.
11. Ms Chhoke Doma Bhutia,
Panchayat President,
37-Rawtey Rumtek G.P.U.,
Sazong Ward – 737135, Sikkim. Respondents

**Writ Appeal under Rule 148 of the Sikkim High Court (Practice
and Procedure) Rules, 2011**

*(against the judgment dated 8th July, 2022 passed by the learned Single Judge
in WP(C) No. 33 of 2020)*

Appearance:

Mr. Jorgay Namka, Senior Advocate as Legal Aid Counsel with Mr. Prajwal Rai, Advocate for the appellant.

Mr. Sudipto Majumdar, Senior Advocate with Mr. Bhusan Nepal, Advocate, for the respondent nos. 1 to 6.

Dr. Doma T. Bhutia, Senior Advocate and Additional Advocate General with Mr. S.K. Chettri, Government Advocate, for the respondent nos. 7 to 10.

Mr. Chewang Norbu Bhutia, Advocate on behalf of Mr. Jushan Lepcha, Advocate, for respondent no.11.

and

W.A. No.07 of 2022

1. State of Sikkim,
Through the Chief Secretary,
Tashiling Secretariat,
Gangtok, Sikkim.
2. The Appellate Authority,
Through the Secretary,
Land Revenue & Disaster Management Department,
Government of Sikkim,
Tashiling, Gangtok, Sikkim.
3. The District Collector,
District Collectorate,
Sichey,
Gangtok.
4. The Additional District Magistrate,
District Collectorate,
Sichey,
Gangtok. Appellants

**W.A. No. 05 of 2022 Nim Pincho Bhutia vs. Bhim Bahadur Rasaily/Kami & others &
W.A. No. 07 of 2022 State of Sikkim & ors. vs. Bhim Bahadur Kami (Biswakarma) &
others**

Versus

1. Bhim Bahadur Kami (Biswakarma),
S/o late Gumaney Kami (Biswakarma),
R/o 4th Mile, J.N. Road, P.O. Kyongnosla,
P.S. Sherathang – 737102.
 2. Gyan Bahadur Rasaily (Biswakarma/Kami),
S/o Bhim Bahadur Kami (Biswakarma) Rasaily,
R/o 4th Mile, J.N. Road, P.O. Kyongnosla,
P.S. Sherathang – 737102.
 3. Nanda Kumar Rasaily Biswakarma/Kami,
S/o Bhim Bahadur Kami (Biswakarma) Rasaily,
R/o 4th Mile, J.N. Road, P.O. Kyongnosla,
P.S. Sherathang – 737102.
 4. Indra Kumar Rasaily (Biswakarma/Kami)
S/o Bhim Bahadur Kami (Biswakarma) Rasaily,
R/o 4th Mile, J.N. Road, P.O. Kyongnosla,
P.S. Sherathang – 737102.
 5. Dhan Bahadur Rasaily (Biswakarma/Kami),
S/o Bhim Bahadur Kami (Biswakarma) Rasaily,
R/o 4th Mile, J.N. Road, P.O. Kyongnosla,
P.S. Sherathang – 737102.
 6. Dil Bahadur Rasaily (Biswakarma/Kami),
S/o Bhim Bahadur Kami (Biswakarma) Rasaily,
R/o 4th Mile, J.N. Road, P.O. Kyongnosla,
P.S. Sherathang – 737102.
 7. Ms Chhoke Doma Bhutia,
D/o Namgay Tshering Bhutia,
Panchayat President,
Rawtey Rumtek G.P.U.,
R/o Rawtey Rumtek, Sajong,
PO & PS Ranipool – 737135.
 8. Mr. Nim Pincho Bhutia,
S/o Kancha Bhutia,
R/o Swayem, Namok Swayen G.P.U.,
Namok Block, Kabi Sub-Division,
P.O. Swayam,
P.S. Mangan-737116.
- Respondents

**Writ Appeal under Rule 148 of the Sikkim High Court (Practice and
Procedure) Rules, 2011**

*(against the judgment dated 8th July 2022 passed by the learned Single Judge
in WP(C) No. 33 of 2020)*

Appearance:

Dr. Doma T. Bhutia, Senior Advocate and Additional Advocate General with Mr. S.K. Chettri, Government Advocate, for the Appellants.

Mr. Sudipto Majumdar, Senior Advocate with Mr. Bhusan Nepal, Advocate, for the respondent nos. 1 to 6.

Mr. Chewang Norbu Bhutia, Advocate on behalf of Mr. Jushan Lepcha, Advocate, for the respondent no.7.

Mr. Jorgay Namka, Senior Advocate as Legal Aid Counsel with Mr. Prajwal Rai, Advocate for the respondent no.8.

Date of hearing : 20th October, 2023

Date of judgment : 8th December, 2023

J U D G M E N T

1. The two Writ Appeals seek to assail the judgment and order passed by the learned Single Judge of this Court in W.P.(C) No. 33 of 2020. W.A. No. 5 of 2022 has been preferred by one Nim Pincho Bhutia (respondent no.6 in the Writ Petition) and W.A. No.7 of 2022 has been preferred by the State of Sikkim and others (respondent nos. 1, 2, 3 & 4 in the Writ Petition).

2. The Writ Petition was preferred by Bhim Bahadur Kami and five others, who are respondent nos.1 to 6 in both the Writ Appeals (for convenience they are collectively referred to as the writ petitioners). According to the Writ Petition, Bhim Bahadur Kami was born on 10.02.1949 to late Gumaney Kami and late Echu Maya. The respondent nos. 2 to 6 claim to be the natural sons of Bhim Bahadur Kami.

3. The Writ Petition was filed challenging an order dated 17.12.2019 passed by the Additional District Magistrate in COI Case No. 27/DM/East of 2018 and the order dated 13.10.2020 passed by the Appellate Authority in Appeal Case No. 01 of 2020 against the order dated 17.12.2019.

4. The dispute arose in the following manner:

Chhoke Doma Bhutia (respondent no.5 in the Writ Petition) made a complaint to the Additional District Collector on 29.08.2018 alleging that one Gumaney Kami had fraudulently made a Certificate of Identification (COI) in favour of his sons and grandsons. It was alleged that Gumaney Kami was, however, unmarried and no one knew about his family except his brother Kancha Kami. Nim Pincho Bhutia, in his complaint dated 04.09.2018, alleged that Gumaney Kami resident of Sajong Rumtek was unmarried and a bachelor who did not possess any landed properties. His name was, however, enrolled in the Sikkim Subject Register along with his brother Chabilall Kami and two other relatives Sukmaya Kami and Birdamaya Kami. Chabilall Kami died in the year 1970. In the year 1998, Bhim Bahadur Kami applied for issuance of COI claiming to be the son of late Gumaney Kami reflecting his age as 39 years. It was further alleged that Bhim Bahadur Kami had produced Gram Panchayat recommendation of Naitam-Nandok GPU, East Sikkim, for issuance of COI instead of Sajong East Sikkim as Gumaney Kami's Sikkim Subject had been issued from Sajong Block. It was alleged that the East District Collectorate surprisingly issued two COIs vide serial no. 2147/DCE dated 06.10.1998 in the name of Bhim Bahadur Kami, son of late Gumaney Kami, and vide serial no. 3487/DCE dated 27.12.2007 in the name of Bhim Bahadur Rasaily (Biswakarma), son of late Gumaney Biswakarma. It was alleged that after obtaining COI, Bhim Bahadur Kami and his other family members managed to obtain COI in the following manner:

**W.A. No. 05 of 2022 Nim Pincho Bhutia vs. Bhim Bahadur Rasaily/Kami & others &
W.A. No. 07 of 2022 State of Sikkim & ors. vs. Bhim Bahadur Kami (Biswakarma) &
others**

“Sl. No.	Name & Father’s Name of COI Holder	Grand Father’s Name of COI Holder & Detail of Sikkim Subject	Sl. No., Date of Issuance of COI & Annexure
1	(a) Indra Kumar Rasaily (Biswakarma) S/o Bhim Bahadur Biswakarma of J.N. Rd. 4 th Mile. (b) Indra Kumar Rasaily, S/o Bhim Bahadur Rasaily (Biswakarma) of J.N. Road.	(i) Guman Singh Kami, Sl. No. 32, Vol. No. II, Block Sajong. (ii) Guman Singh (Kami) Rasaily, Sl. No. 32, Vol. No. II, Block Sajong.	i) 2160/DCE dated 31/8/2006 (enclosed as 8) ii) 3488/DCE Dated 27/XII/2007 (enclosed as Annex-9)
2	(a) Nanda Kumar Biswakarma Rasaily, S/o Bhim Bahadur Biswakarma (Kami) of Gnathang. (b) Nanda Kumar Rasaily (Biswakarma), S/o Bhim Bahadur Rasaily (Biswakarma) of Gnathang.	(i) Late Gumaney Kami, Sl. No. 32, Vol. No. II, Block Sajong. (ii) Gumaney Kami Rasaily, Sl. No. 32, Vol. No. II, Block Sajong.	i) 2131/DCE dated 30/08/2006 (enclosed as Annex-10) ii) 3491/DCE Dated 27/XII/2007 (enclosed as Annex-11)
3	(a) Gyan Bahadur Biswakarma Rasaily, S/o Bhim Bahadur Biswakarma (Kami) of Gnathang. (b) Gyan Bahadur Rasaily (Biswakarma) of Gnathang.	(i) Late Gumaney Kami, Sl. No. 32, Vol. No. II, Block Sajong. (ii) Gumaney Kami, Sl. No. 32, Vol. No. II, Block Sajong.	i) 2132/DCE dated 30/8/2006 (enclosed as 12) ii) 3490/DCE Dated 27/XII/2007 (enclosed as Annex-13)
4	(a) Dhan Kumar Biswakarma, S/o Bhim Bahadur Biswakarma of J.N. Road. (b) Dhan Bahadur Rasaily (Biswakarma), S/o Bhim Bahadur Rasaily (Biswakarma) of J.N. Road.	(i) late Gumaney Kami, Sl. No. 32, Vol. No. II, Block Sajong. (ii) Gumaney Kami, Sl. No. 32, vol. No. II, Block Sajong.	i) 2159/DCE dated 31/8/2006 (enclosed as Annex-14) ii) 3492/DCE Dated 27/XII/2007 (enclosed as Annex-15)
5	(a) Dil Bahadur Biswakarma, S/o Bhim Bahadur Biswakarma of Gnathang. (b) Dil Bahadur Rasaily (Biswakarma), S/o Bhim Bahadur Rasaily (Biswakarma) of Gnathang.	(i) Late Gumaney Kami, Sl. No. 32, Vol. No. II, Block Sajong. (ii) Late Gumaney Kami Rasaily, Sl. No. 32, Vol. No. II, Block Sajong.	i) 2129/DCE dated 30/8/2006 (enclosed as Annex-16) ii) 3489/DCE Dated 27/XII/2007 (enclosed as Annex-17)”

5. It was alleged that there was discrepancy in the surname of the petitioners as well as in the name and surname of Gumaney Kami in the COIs as reflected above. Various other allegations have been made by Nim Pincho Bhutia to submit that the COIs were obtained by Bhim Bahadur Kami and his family members (petitioners) by

**W.A. No. 05 of 2022 Nim Pincho Bhutia vs. Bhim Bahadur Rasaily/Kami & others &
W.A. No. 07 of 2022 State of Sikkim & ors. vs. Bhim Bahadur Kami (Biswakarma) &
others**

misrepresenting themselves as son and grandsons of late Gumaney Kami. Nim Pincho Bhutia, therefore, sought for a thorough verification, remedial measures and stringent action if there had been any breach of the laws of the land.

6. The Additional District Magistrate took cognizance of the written complaints filed by Chhoke Doma Bhutia and Nim Pincho Bhutia. The Additional District Magistrate concluded that Bhim Bahadur Kami was not the real or biological son of Gumaney Kami and that he acquired the Certificate of Identification (COI) by misleading the office of the Additional District Collector. Accordingly, Bhim Bahadur Kami's COI bearing serial nos. 2147/DCE dated 06.10.1998 and 3487/DCE dated 27.12.2007, were cancelled. The Additional District Magistrate also directed that all the COIs issued to the sons and descendents of Bhim Bahadur Kami also stood cancelled.

7. The Appellate Authority vide final order dated 13.10.2020 upheld the order dated 17.12.2019 passed by the Additional District Magistrate and observed as under:-

“1. As per the record of Sikkim Subject Register, Lt. Gumanay Kami is found recorded at Sl. No. 32 Volume No. II under Sajong Block and Suk Maya Kamini and Bidra Maya Kamani, both daughters of Lt. Gumaney Kami is also found recorded at Serial No. 34 & 35 Volume No. II under Sajong Block. But the name of Shri Bhim Bahadur Biswakarma, who is elder to Bidra Maya Kamini, is not found in the Sikkim Subject Register.

2. As per record, Shri Bhim Bahadur Biswakarma had obtained his COI in the year, 1998 when he was at a mature age of 39 years old contrary to the normal practice of obtaining COI at an early age as the same is required for various official purposes within the State of Sikkim.

3. As per record, the Appellant Shri Bhim Bahadur Biswakarma had obtained his COI on the basis of Panchayat recommendations/endorsement of Naitam Nandok as reflected in the COI application form and not from his concerned block Panchayat i.e Panchayats of

**W.A. No. 05 of 2022 Nim Pincho Bhutia vs. Bhim Bahadur Rasaily/Kami & others &
W.A. No. 07 of 2022 State of Sikkim & ors. vs. Bhim Bahadur Kami (Biswakarma) &
others**

Sajong-Rawtey Rumtek wherein Lt. Gumanay Kami's name is found recorded in the Sikkim Subject Register.

4. At the time of applying COI of the Appellants sons, the Panchayat recommendation/endorsement on the COI application form has been obtained from Panchayats of Gnathang, East Sikkim and not from Sajong-Rawtey Rumtek wherein Lt. Gumanay Kami's name is found recorded in the Sikkim Subject Register.

5. The details recorded in the duplicate COI issued to the appellant and his sons in the year, 2007 is not ditto with the original COI's issued in the year 1998 & 2006 and even the issue No. of the COI is also found differing from the original COI.

6. On close perusal of all the documents of the Appellants' descendents like Birth Certificate, Education qualification Certificate, Ration Card, School Transfer Certificate, Driving Licence, etc. issued prior to year, 2007 their surname is uniformly recorded as Biswakarma and their father surname is also found recorded as Biswakarma only. However, in the Certificate of Identification of the Appellant issued in the year, 1998 & 2007 and in the Certificate of Identification of the Appellants sons issued in the year, 2006 and 2007, there is variation in the surnames of all the individuals from Kami to Rasaily (Biswakarma) to Biswakarma (Kami) to Rasaily etc. And further Lt. Gumanay Kami's name reflected in their COI also differs from Gumanay Kami to Guman Singh Kami to Gyaney Kami to Guman Singh (Kami) Rasaily to Gumanay Kami Rasaily etc. which has raised serious concern over the authenticity of names. Such correction is normally done through affidavit which is not done in this case.

7. On perusal of record, it is also found that one Bhakta Bahadur Lohar resident of Busuk has also obtained COI bearing Sl. No. 559/DCE dated 23/01/1996 through Lt. Gumanay Kami claiming to be his son. To this effect the Ld. Additional District Magistrate has also reported that various persons have obtained COI through Sikkim Subject records of Lt. Gumanay Kami.

8. The record also transpired that expansion of family members of late Gumaney Kami which has not been taken into cognizance during the proceeding in the trial court.

9. The record did not show any application for re-issue of COI with another name. But the COI is found to have been issued repeatedly in various surnames.

10. The marital status of late Gumaney Kami which was one of the basic point of contention raised by the respondent as to Shri Bhim Bahadur Kami being the biological/legal son of Gumaney Kami was never contested by the appellant in the trial court by presenting witnesses such as Gumanay Kami's descendents in person before the court."

8. The Appellate Authority rejected the appeal preferred by Bhim Bahadur Kami against the order dated 17.12.2019, *inter alia*, on

the ground that Bhim Bahadur Kami did not produce any witness to establish that he was the son of Gumaney Kami.

9. The Writ Petition filed by Bhim Bahadur Kami and the five other petitioners assailing the orders dated 17.12.2019 and 13.10.2020 was allowed by the learned Single Judge. In the Writ Petition, amongst the various grounds taken, it was also alleged that Bhim Bahadur Kami was not given a copy of the complaint and that the rest of the petitioners had not even been issued a show-cause before their COIs were cancelled.

10.(i) The learned Single Judge held that the Additional District Magistrate had exercised authority exceeding his jurisdiction; that there was violation of principles of natural justice on account of non-furnishing of the complaints to the petitioners; lack of opportunity to put forth their own case and to cross-examine the witnesses. The learned Single Judge thus arrived at the following conclusions:-

“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.”

10.(ii) The first conclusion arrived at by the learned Single Judge was based on the following facts. On 28.09.2015, one Biraj Adhikari had filed a Writ Petition in the nature of a public interest litigation, being *WP(PIL) No. 06 of 2015 – Biraj Adhikari vs. State of Sikkim and others* (PIL), seeking enquiry into and cancellation of 31180 fake cases of COI. The Division Bench had issued notice to the State respondents and the Central Government. The State respondents had filed affidavit on 16.04.2016 proposing to verify the alleged fake COIs. The Division Bench vide order dated 20.06.2016 directed the State respondents to carry out scrutiny and enquiry as contemplated in the affidavit filed by the State respondent. It was also directed that the District Collector shall make enquiry strictly in accordance with law. Thereafter, pursuant to the order passed by the Division Bench dated 24.08.2017, the State Government issued notification constituting a Commission headed by a retired Judge of this Court to (i) inquire into allegations of issue of doubtful/fake Certificate of Identification; (ii) recommend issuance and digitisation of Certificate of Identification in the smart card format containing relevant information; (iii) submit its report within three months from the date of issue of notification; and (iv) the Commission may adopt its own procedure for performance of its functions. The scrutiny was carried out by the concerned Commission which submitted its Report dated 18.08.2018 to the State Government, which accepted the Report on 27.09.2018. The State Government filed the report before the Division Bench on 02.11.2018. Thereafter, the Division Bench of this Court disposed of the PIL on 03.12.2019.

10.(iii) The learned Single Judge in view of the affidavit submitted by the State on 16.04.2016 assumed that the process of verification of records of 31180 doubtful cases of Sikkim Subject Certificates and COIs were obtained from the districts; the details mentioned by the applicants in their applications for grant of COIs were verified from the original register maintained; and that if cases were found to be doubtful on scrutiny they would have been referred to the concerned District Collector for further inquiry and cancelled, if necessary.

10.(iv) The learned Single Judge noted that Chhoke Doma Bhutia had filed a complaint on 29.08.2018 and Nim Pincho Bhutia on 04.09.2018 against Bhim Bahadur Kami and the other petitioners when the PIL was before the Division Bench of this Court. The learned Single Judge opined that the order dated 17.12.2019 passed by the Additional District Magistrate reflected that during the PIL before this Court parallel proceedings with regard to the complaints filed were being carried out and upon the disposal of the PIL on 03.12.2019, order dated 17.12.2019 was passed by the Additional District Magistrate and thereafter, the order dated 13.10.2020 by the Appellate Authority. The learned Single Judge considered the judgments of the Hon'ble Supreme Court in *State of Andhra Pradesh vs. Raghu Ramakrishna Raju Kanumuru (M.P.)*¹, *Arunima Baruah vs. Union of India and Others*², *Jai Singh vs. Union of India & Others*³, *J. Chitra vs. District Collector & Chairman, State Level Vigilance Committee, Tamil Nadu & Others*⁴ and opined that parallel remedies in respect of the same matter could not be pursued at the same time.

¹ 2022 SCCOnline SC 728

² (2007) 6 SCC 120

³ (1977) 1 SCC 1

⁴ (2021) 9 SCC 811

11. We have examined the order of the Division Bench dated 03.12.2019, which ultimately disposed of the PIL filed by Biraj Adhikari. A perusal of the order reflects that the Division Bench of this Court decided to dispose of the PIL in view of the fact that the One Man Commission had submitted its Report dated 18.08.2018 which had been duly approved by the State Government. The order extracts part of the Report of the Commission as under:-

“4.1. Therefore, it is the finding of the Commission that of the 33388 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 categorized 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.”

12. What is thus clear from the extract of the Report of the Commission is that in the list of 33388 persons reported as false cases, there were many unverified cases which were also listed as false cases, since there was no verification. Further, the District Collectors had verified 8378 cases and none were reported to be fake.

13. According to the petitioners, in the final Report of the Commission, the name of Bhim Bahadur Biswakarma Kami is mentioned at serial no.755 at page 48 and in the remarks, it has been recorded as ‘verified and found correct’. The State respondent in its counter-affidavit has stated that COI was issued to petitioner no.1 on the basis of Sikkim Subject Certificate of Gumaney Kami as during that period there was no allegation that petitioner no.1 was not the son of Gumaney Kami. It was only subsequently that it was found that petitioner no.1 had obtained the COI by misrepresentation and therefore cancelled.

14. It is clear that the Commission had submitted its Report dated 18.08.2018 to the State Government. Evidently, the State Authorities could have conducted the verification before submission of the Report of the Commission. At that time, neither the complaint of Chhoke Doma Bhutia dated 29.08.2018 nor the complaint of Nim Pincho Bhutia dated 04.09.2018, were before the concerned Authorities. The available records reveal that the complaint of Chhoke Doma Bhutia was entertained by the Additional District Magistrate on 11.10.2018 by issuing summons to Bhim Bahadur Kami - the petitioner no.1, after the State Government had on 27.09.2018 accepted the recommendation of the Commission. However, it is evident that the complaints were entertained by the Additional District Magistrate when the PIL preferred by Biraj Adhikari had still not been disposed of by the Division Bench of this Court, which was done only on 03.12.2019. The question which is to be examined, therefore, is whether the Additional District Magistrate could have done so.

15. In *Raghu Ramakrishna Raju Kanumuru (M.P.)* (supra), the Hon'ble Supreme Court held it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting order passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they were required to follow. 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.

16. It is noticed that the facts in *Raghu Ramakrishna Raju Kanumuru (M.P.)* (supra) are, however, different from the facts of the present case as seen above.

17. In *Jai Singh* (supra), the appellant therein had filed a suit after the dismissal of the writ petition by the High Court in which he had agitated the same question which is the subject matter of the writ petition. The Hon'ble Supreme Court opined that the appellant could not pursue two parallel remedies in respect of the same matter at the same time. In *Arunima Baruah* (supra), the Hon'ble Supreme Court reiterated the doctrine that the Court would not ordinarily permit a party to pursue two parallel remedies in respect of the same subject matter.

18. In the present case, the PIL was preferred by one Biraj Adhikari before this Court. The complaints before the Additional District Magistrate were by Chhoke Doma Bhutia and Nim Pincho Bhutia. Therefore, it was not a case in which the same person was pursuing two parallel remedies.

19. In *J. Chitra* (supra), an inquiry was conducted by the District-Level Vigilance Committee which had upheld the Community Certificate in favour of the appellant therein. The decision of the District-Level Vigilance Committee in the year 1999 had not been challenged in any forum. The Hon'ble Supreme Court opined that the recognition of the Community Certificate issued in favour of the appellant by the District-Level 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 Hon'ble Supreme Court also noted that the guidelines issued by G.O. No. 108 dated 12.09.2007 do not permit the State Level Scrutiny Committee to reopen cases which have become final. It was held that the purpose of verification of caste certificates by Scrutiny Committees is to avoid false and bogus claim. It was in the above distinct facts that the Hon'ble Supreme Court opined that reopening of inquiry into caste certificates can be only in case they are vitiated by fraud or when they were issued without proper inquiry.

20.(i) The facts in the present case are distinctly different. At this juncture, it would be important to consider the relevant provision of Notification No. 66/HOME/95 dated 22/11/1995 as amended by Notification No. 119/HOME/2010 dated 26.10.2010 (the COI Notification) which authorizes the Issuing Authority to cancel the COI.

It reads:

“The issuing authority is also authorised 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.

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.”

20.(ii) As per the COI Notifications, as seen above, the issuing authority is given the power to cancel the COI 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.

21. In *K.T.M.T.M. Abdul Kayoom vs. CIT*⁵, the Hon'ble Supreme Court held that:

“19. Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive

Precedent should be followed only so far as it marks the path of justice, but you must cut the deadwood and trim of the side branches else you will find yourself lost in thickets and brunches. My plea is to keep the path of justice clear of obstructions which could impede it.”

22. We are, therefore, of the considered view that merely because Chhoke Doma Bhutia and Nim Pincho Bhutia filed their complaints against the petitioners before the Statutory Authority under the COI Notifications, it cannot be held that parallel remedies were pursued as there was a PIL preferred by one Biraj Adhikari pending final disposal before the Division Bench of this Court. More so, because as seen above, the complaints were filed only after the Commission had submitted its Report dated 18.08.2018. From what has been placed before this Court, the Report only indicated that the COI issued to petitioner no.1 had been verified and found correct. However, there is no record of the Commission's satisfaction on the COIs of the petitioner nos. 2 to 6. The extract of the Report of the Commission also makes it evident that the Authorities had verified only 8378 cases. It is also unclear whether the Commission had the relevant material placed by the complainants when it made the Report dated 18.08.2018 against Bhim Bahadur Kami.

⁵ AIR 1962 SC 680

23. We are also of the opinion that the order dated 17.12.2019 of the Additional District Magistrate and the order dated 13.10.2020 of the Appellate Authority, are wanting and violative of the principles of natural justice as held by the learned Judge. We are, however, not in agreement with the opinion that the authorities lacked jurisdiction as the COI Notifications clearly authorized the “issuing authority” to cancel the COI. As held by the learned Single Judge, the Additional District Magistrate violated the principles of natural justice by not furnishing a copy of the complaint to the petitioner no.1 and not giving a show-cause to the petitioner nos. 2 to 6 to allow them to defend the case of proposed cancellation of their COI. We deem it fit and proper not to render our opinion further on the merits of the case and remand the matter to the jurisdictional District Collector to re-examine the complaints after giving opportunity of hearing to all the affected parties including filing of written statements in their defence and leading evidence (both oral & documentary). The Statutory Authority under the COI Notifications shall conduct a proper inquiry in a manner contemplated and render its opinion on the complaints preferred by Chhoke Doma Bhutia and Nim Pincho Bhutia without being influenced. Until such decision, no adverse steps shall be taken against the writ petitioners with regard to the COIs issued to them.

24. The order dated 17.12.2019 of the Additional District Magistrate and order dated 13.10.2020 passed by the Appellate Authority are set aside. The complaint filed by Chhoke Doma Bhutia dated 29.08.2018 and the complaint dated 04.09.2018 filed by Nim Pincho Bhutia are restored before the jurisdictional District Collector for proper inquiry as directed.

**W.A. No. 05 of 2022 Nim Pincho Bhutia vs. Bhim Bahadur Rasaily/Kami & others &
W.A. No. 07 of 2022 State of Sikkim & ors. vs. Bhim Bahadur Kami (Biswakarma) &
others**

25. The Writ Petition is partially allowed as above. The Writ Appeals are accordingly disposed of.

**(Bhaskar Raj Pradhan)
Judge**

**(Biswanath Somadder)
Chief Justice**

Approved for reporting : **Yes/No**
Internet : **Yes/No**

bp