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IN THE HIGH COURT OF SIKKIM AT GANGTOK.

WRIT PETITION (C) NO. 10 OF 2003

Hem Lall Bhandari, LL.M. (Harvard)
Advocate, permanent resident of C-73
Rawte-Rumtek, East District, Sikkim.

...Petitioner

-VERSUS-

1. The State of Sikkim
Through its Chief Secretary
Having his office in Tashiling Secretariat
Gangtok, Sikkim.
2. The Hon'ble Shri R. Dayal
Chief Justice, High Court
Bungalow No. 11, VIP Colony
Gangtok, Sikkim.
3. The Registrar General
High Court of Sikkim
Gangtok, Sikkim.
4. The Union of India
through the Secretary
Ministry of Law, Justice and Company
Affairs
Shastri Bhawan
New Delhi.
5. The Secretary
Finance Department
Tashiling Secretariat
Gangtok, Sikkim.
6. The Accountant General
Lower Secretariat
31-A, National Highway
Gangtok, Sikkim.

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7. The Chief Controller (Pension)
Ministry of Finance
Department of Expenditure
Central Pension Accounting Office
Trikoote-II, Bhikaji Kama Lane
New Delhi-110 066.

...Respondents.

Coram : Hon'ble Mr. Justice N.S. Singh, Judge.

Present: Mr. S.K. Home Choudhury, Senior Advocate assisted by Mr. D.K. Singh, Advocate along with Mr. Hem Lall Bhandari, the petitioner in person.

Mr. S.P. Wangdi, Senior Advocate and Senior Central Government Standing Counsel with Mr. Karma Thinlay, Advocate for respondent Nos. 3, 4, 6 and 7.

Mr. N.B. Khatiwada, Additional Advocate General with Mr. J.B. Pradhan, Government Advocate for respondent No. 1 and 5.

Date of Decision : May 17, 2003.

JUDGMENT/ORDER

N.S. SINGH, J.

By way of Public Interest Litigation, for short PIL, the writ petitioner Shri Hem Lall Bhandari approached this Court with this writ petition questioning the validity of the impugned Notifications dated 15th December 1998 as in Annexure P-2 and P-3 to the Writ Petition which was later on withdrawn by the authority concerned under the related

N.S. Singh



Notification dated 12th August 2002 as in Annexure P-5, coupled with a prayer for declaring the entire amount on account of house rent and conveyance allowances drawn by Hon'ble Mr. Justice R. Dayal, Chief Justice of this Court, Respondent No. 2 herein by virtue of the impugned Notifications as in Annexure P-2 and P-3 is liable to be refunded by Respondent No. 2 with interest thereon and with a further direction to the C.B.I. to inquire into the affairs and the alleged tampering and manipulation of Certificate of Registration of official vehicle No. SK-02/0006 and to probe and book the wrong doers by contending, inter alia,

(a) that, the petitioner is an Advocate, a permanent resident of Rumtek, East District, Sikkim and is keenly interested in the diligent discharge of his fundamental duties cast upon him by clause (h) and (j) of Article 51-A of the Constitution of India and the filing of the present Writ Petition by way of PIL has been inspired by the inaugural address of His Excellency the President of India on 26th April 2003 in the Seminar on "Access to Justice" organized by the Supreme Court Advocates-on-record Association and supported by the United Nations Development Programme as seen in the document marked as Annexure P-1 to the Writ Petition;

N. J. Gai



(b) that, the State Government of Sikkim provided furnished residence for the Chief Justice at Balwakhani, Gangtok and the Puisne Judge of the High Court of Sikkim at Bhanupath, Gangtok and both the official residences of the Chief Justice and the Puisne Judge had all along been under the care of the High Court and maintained by the State and in the year 1997-98 the Registry of the High Court spent about Rs.1,90,000/- for furnishing the official residence of the Chief Justice; and

(c) that, after Respondent No. 2 was elevated as permanent Chief Justice of the High Court in February 1999, he has been in occupation of a well-furnished, spacious official residence (Bungalow No. 11) situated in the VIP colony provided by the Government and in spite of occupying a well furnished official residence provided by the Government, Respondent No. 2 herein has drawn house rent allowance at the rate of Rs.10,000/- per month in separate bills, from the month of assuming the post till 11th August 2002, and as a pretext to draw house rent at the rate of Rs.10,000/- per month in spite of occupying a well-furnished official residence, a Notification dated 15th December 1998 was got issued

11/3/2002



by Respondent No. 1 on the incorrect and dishonest plea that since a befitting and suitable official residence could not be provided, the Hon'ble Judges would be entitled to draw house rent allowance at the rate of Rs.10,000/- per month and they would pay rent at the rate of Rs.1,000/- only per month for the official residence in occupation; and

(d) that, those official residences could not become unsuitable and befitting as official residence of the Hon'ble Judges, and apparently, the Notification dated 15.12.1998 (Annexure P-2 and P-3) was issued by the Respondent No. 1 on the incorrect plea that suitable and befitting official residence could not be provided to the Hon'ble Judges, was nothing but a clever device to favour the Hon'ble Judges with undue financial benefit to enable them to draw income-tax free house-rent at the rate of Rs.10,000/- per month while occupying and enjoying the well-furnished spacious official residence; and

(e) that, in spite of being provided with an official car bearing Registration No. SK-02/0006 and driven by a Government paid uniformed chauffeur and enjoying the

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same benefit, the Respondent No. 2 herein drew at the rate of Rs.10,000/- per month as income tax free conveyance allowance from February 1999 to 30th June 2000 and at the rate of Rs.12,000/- per month from 01st July 2000 to 30th August 2001 and at the rate of Rs.15,000/- per month from 24th May 2002 till date while continuously using the aforesaid Government vehicle by virtue of Notification dated 24th May 2002 (Annexure P-4); and

(f) that, the drawal of house rent allowance and conveyance allowance by Respondent No. 2 during the aforesaid period tantamounts to appropriation of Government money; and

(g) that, with a view to cover up the illegal drawal of conveyance allowance in spite of being provided with an official staff car driven by Government paid chauffeur, the record of registration of Government vehicle No. SK-02/0006 attached to the Hon^{ble} Chief Justice as his official car, which was registered on 21st March 1990, has been tampered with and manipulated to depict the said Government vehicle as the 'private car' of respondent No. 2; and

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(h) that, the impugned Notifications dated 15th December 1998 (Annexure P-2 and P-3) were challenged in the Hon'ble Supreme Court in Writ Petition (Civil) No. 331 of 2002 and that after receipt of notice of the aforesaid Petition, the Respondent No. 1 by a Notification dated 12th August 2002 (Annexure P-5) withdrew the aforesaid Notifications dated 15th December 1998 and declared the bungalow in occupation of Respondent No. 2 as the official residence of the Chief Justice, High Court of Sikkim and in view of withdrawal of Notifications dated 15th December 1998 showering undue financial benefits to Respondent No. 2 by Notification dated 12th August 2002, the said Writ Petition (Civil) No. 331 of 2002 pending in the Supreme Court became infructuous and was accordingly dismissed as withdrawn.

2. It is also the case of the writ petitioner that as the ex-facie illegal Notifications dated 15th December 1998 (Annexure P-2 and P-3) have been withdrawn by Respondent No. 1, the Respondent No. 2 can not be allowed to enjoy the undue and illegal benefit of those Notifications already obtained by him by way of house-rent and conveyances and

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he is duty bound to refund the amounts totaling about Rs.8,50,000/- with interest thereon, to the Public Exchequer.

3. That at the very outset the respondents particularly respondents No. 1, 3 and 5 raised Preliminary Objection to the maintainability of the present Writ Petition by filing separate written Preliminary Objection by the Respondents No. 1 and 5 on the one hand and a similar objection by the Respondent No. 3 on the other hand by contending inter alia, that the present Writ Petition is not filed bonafide by a public spirited person to ventilate some public interest but is a private interest litigation to project the personal interest of the petitioner, the political party he represents, the unscrupulous elements he supports and to terrorize the members of the Subordinate Judiciary of the State so that the members of the Subordinate Judiciary may deliver judgment according to his whims and the petitioner though he claims himself to be a Harvard educated lawyer, he does not have a single brief in the High Court and he is an active member of the Sikkim Sangram Parishad Political Party headed by Shri N.B. Bhandari, who (Shri N.B. Bhandari) and seven other persons questioned the validity of the related order framing the charges in connection with the corruption cases before this Court under Criminal Revision Nos. 5 of

N.B. Bhandari



2003 and 1 to 4 of 2003 which were dismissed on 1st May 2003 by the Division Bench of this Court headed by the Respondent No. 2 and by the reasons of such dismissal of the Criminal Revision cases, the writ petitioner soon after the dismissal of the Criminal Revisions of a prominent leader of his political party who could not get a favourable order from this Court, filing the present Writ Petition was merely done in order to bring disrepute to the Hon'ble High Court and as such it could not be said to be in public interest and this fact further get support from the fact that though the petition was filed on 9th May 2003 in the afternoon, a news item was published in a News Magazine North Eastern Weekend Review (9-15 May 2003) which must have been printed before 8th May 2003 wrongly stating that the Writ Petition was filed on 8th May 2003 and moreover the Writ Petitioner gave publicity of it by holding press conference on 11th May 2003 and this clearly shows the malafide intention of the petitioner and that the Writ Petition contains false, frivolous, scandalous and contemptuous allegations made deliberately and intentionally to bring disrepute to the judiciary which amounts to Contempt of Court.

4. Supporting the case of the writ petitioner, Mr. S.K. Home Choudhury, the learned Senior counsel contended that

N. S. Choudhury



the Respondent No. 2 is not entitled to house rent and conveyance allowances as he has been given a well-furnished official residence and provided an official car and the illegal and undue financial benefits on account of house rent and conveyance obtained by Respondent No. 2 to the tune of Rs.8,50,000/- approximately amounts to wrongful loss to the Public Exchequer and the wrongful gain to Respondent No. 2 and that being the position, Respondent No. 2 is bound to refund the said entire amount with interest therein to the Public Exchequer. It is also argued by the learned Senior Counsel that the manipulation and tampering with the Certificate of Registration of official car No. SK-02/0006 to depict/convert it as the private car of the Respondent No. 2 is a very serious matter and it is a fit case for probing the entire matter by the C.B.I. to book the wrong doers and apart from it, the Respondents No. 3, 4, 5, 6 and 7 are duty bound to recover the illegally derived financial benefits to the tune of Rs.8,50,000/- approximately on account of house rent and conveyance allowances by the Respondent No. 2 from his salary, leave encashment due and other pensionary benefits. According to Mr. Home Choudhury, the learned Senior Counsel there is no delay or laches on the part of the writ petitioner as the cause of action of the present case is a continuous one and that no question of res-judicata shall

N. S. Choudhury



ever arise in the instant case and it is a fit case for treating the same as a PIL and in such circumstances an appropriate ad interim order is called for from the end of this Court for withholding and directing the official respondents not to pay any salary, dues, Provident Fund or any other entitlement to the Respondent No. 2 pending final disposal of the present Writ Petition. Supporting the above contention of manipulation and tampering with the Certificate of Registration of the official car, Mr. S.K. Home Choudhury has drawn my attention to the document marked Annexure P-6 which is a copy of the Certificate of Registration of the official car and submitted that the registration number, year of manufacture, class of vehicle, chassis number, engine number, etc. of the official vehicle concerned had been changed/tampered and the name of the Respondent No. 2 has been recorded for personal gain of Respondent No. 2 and apart from the recording of the name of the Respondent No. 2 and treating the class of the vehicle as a private vehicle of the Respondent No. 2 by the Motor Vehicle Department is in complete violation of the provisions of the Section 47 and Section 146 of the Motor Vehicles Act, 1988. Mr. Home Choudhury, learned Senior Counsel further contended that the official respondents made a false statement in their application for Preliminary Objection inasmuch as the

N. S. Choudhury



Respondent No. 3 at paragraph 11 (iv) of the Preliminary Objection specifically stated that it was in August 2002 that an official vehicle was provided by the State Government to the Respondent No. 2, but a bare perusal of the documents marked Annexure A-1 of the Preliminary Objection of the Respondents No. 1 and 5 that is the copy of the Certificate of Registration shows that the official vehicle NE 118 year of manufacture 1990 stands in the name of "Registrar General, High Court of Sikkim, Gangtok" as the registered owner as on 16th April 1999 for which required tax has been paid upto 16th April 2000 and the validity of the registration remains up to 16th May 2005 though there is a correction of the name of the owner of the vehicle by deleting the name of the "Registrar General, High Court of Sikkim, Gangtok" and inserting the name of "Secretary, Food and Civil Supplies and Consumer Affairs Department, Govt. of Sikkim". Mr. Home Choudhury went on contended that the Hon'ble Supreme Court did not decide the earlier Writ Petition i.e. the Writ Petition (Civil) No. 331 of 2002 on merit and such decision is not binding upon the High Court and the High Court should go into the merit of the case and decide it as the same is not barred by principle of res judicata and moreover, in the light of the existing facts and circumstances of the case, judicial scrutiny is called for as the cleanness of judiciary is paramount interest of public

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at large. In the instant case, the Respondent No. 2 has been occupying a well-furnished official residence and even the Registry of the High Court had spent about Rs.1,90,000/- for further furnishing of the official residence of the Chief Justice and further provided with an official car bearing Registration No. SK-02/0006 and driven by a Government paid uniformed chauffeur and that being the position the Respondent No. 2 is not entitled to draw the house rent and conveyance allowance as mentioned above and drawal of such allowance and rent by the Respondent No. 2 amounts to appropriation of public money and, the Respondent No. 2 knowing fully well had drawn such rent and allowance to which he was not legally entitled, Mr. Choudhury argued. Learned Senior Counsel also contended that the Preliminary Objection raised by the respondents concerned pertaining to the maintainability of the present Writ Petition should not be entertained by this Court and the same deserves its outright rejection.

5. Shri S.P. Wangdi, learned Senior Counsel appearing on behalf of Respondents No. 3, 4, 6 and 7 contended that the present Writ Petition is not to further any public interest but to frustrate it at the instance of those who do not want the High Court and the Subordinate Judiciary in the State to work efficiently, impartially and independently

N. J. Gai



and, the present Writ Petition has been filed with false allegations in order to intimidate and terrorize the judicial officers of the State in an attempt so that in their own interest they may deal with the judicial cases to serve the private interest which the petitioner seeks to serve in the garb of public interest and, the writ petitioner is a briefless lawyer so far as the High Court is concerned and he has full interest in influencing the subordinate judiciary by attacking the High Court in order to give the message to the members of the judicial service that the petitioner can bring the judicial officers also in controversy and so they should work according to his wishes. It was also contended that the present Writ Petition is in furtherance of Writ Petition (C) No. 331 of 2002 filed in the Hon'ble Supreme Court under Article 32 of the Constitution of India by one Gulshan Rai Nagpal against whom three criminal cases are pending in the Subordinate Courts and two criminal contempt cases are pending in the High Court and the said Writ Petition (C) No. 331 of 2002 was dismissed as withdrawn vide, Order dated 2nd December 2002 as a Annexure A-2 to the Preliminary Objection petition of the Respondent No. 3. According to Mr. Wangdi, learned Senior Counsel, the Hon'ble Supreme Court did not want the controversy in any form regarding the two items which have been made the subject matter of the

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petition to continue any longer and apart from it when the Court allows a public interest litigation to be withdrawn, the necessary implication is that no person can re-agitate the same matter in any form even by ingenious drafting in making some changes here and there and the subject matter of the present Writ Petition in some substance is the same as was in the petition before the Hon'ble Supreme Court that is the validity of the aforesaid two Notifications dated 15th December 1998. Mr. Wangdi, learned Senior Counsel went on to contend that the Respondent No. 2 made the drawal of house rent and conveyance allowances in terms of the related valid Notifications and Orders issued by the competent authority and those Notifications dated 15th December 1998 were issued before the Respondent No. 2 has been posted in the State as Chief Justice of this High Court and it is unconceivable that the Government would think of giving undue benefit to a Chief Justice who had not been posted in the State at the relevant time and over and above this, both the impugned Notifications dated 15th December 1998 are admittedly not in existence as they have been withdrawn vide, Notification No. 30/HOME dated 12th August 2002 and, there can be no question of declaring the Notifications which do not exists as illegal. On behalf of the Respondent No. 3 Mr. Wangdi, learned Senior Counsel mainly contended that the

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Respondent No. 2 had been using his personal car till the allotment of official vehicle by the State Government and the vehicle which was attached to the previous and former Chief Justices of this High Court was of NE 118 (off white colour) bearing Engine No. 025651, Chassis No. 26489 with the year of manufacture as 1990 and its registration number was SK-02/0006 and this registration number is ear-marked and meant for Chief Justice and after the former Chief Justice Thanikkachalam demitted office in 1997, the said vehicle being an old one and not fit for use of the Chief Justice was allotted to the Joint Registrar in the year 1998 before the Respondent No. 2 came to Sikkim in February, 1999 and at the relevant time when the Joint Registrar proceeded to State Government on deputation, the said vehicle was surrendered by the High Court to the State Government and subsequently the same NE 118 bearing Registration No. SK-02/5907 was allotted to the Sikkim State Consumer Disputes Redressal Commission and the Respondent No. 2 was using his personal vehicle NE 118 (off white colour) bearing Registration No. MH 01/P-5948 bearing Chassis No. 060211, Engine No. 059242 with the year of manufacture as 1994, when the Respondent No. 2 was a Judge of Calcutta High Court and he was drawing the conveyance allowance in West Bengal and while in Sikkim, the Respondent No. 2 applied for

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change of Registration Number and allotment of Registration Number by Sikkim Transport Authority and thereafter the Transport Authority allotted the Registration No. SK-02/0006 and accordingly the respondent No. 2 drew conveyance allowance in terms of the impugned Notification dated 15th December 1998 and it was in August 2002 that an official vehicle was provided by the State Government to the Respondent No. 2, and thereupon the Respondent No. 2 sold his private vehicle to Shri Bimal Kumar Sarma Choudhury of Siliguri and a new official vehicle was provided to Hon'ble Chief Justice in the year 2002 the same registration number SK-02/0006 which was allotted to the personal vehicle of the Chief Justice has been allotted to the new official vehicle by the State Government and that being the position the allegation of tampering or manipulation of the record are entirely unfounded, baseless and the same have been made to bring the High Court in disrepute so that the High Court may not work independently. Mr. Wangdi further submitted that the writ petitioner has not only committed grave Contempt of Court but has also deliberately made false statements making him liable to be prosecuted under Section 193 IPC. According to Mr. Wangdi, learned Senior Counsel, it was decided by the State Government to provide a temporary official residence for Respondent No. 2 in bungalow No. 11 at VIP complex as

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temporary measure though the bungalow No. 11 was not considered to be fit and suitable for a Chief Justice after some further improvement were made in the said bungalow in order to provide some minimum facilities, and the respondent No. 2 has been allowed to draw house rent allowance under the related impugned Notifications which had been in existence before the Respondent No. 2 assumed the charge of Chief Justice, but later on, the said Notification was withdrawn under a related Notification dated 12th August 2002 and moreover, the original earmarked bungalow at Balwakhani was not available to be occupied by the Hon'ble Chief Justice in February 1999 since the office of the Sikkim State Legal Services Authority was functioning in that bungalow. Highlighting the malafide motive of the writ petitioner and the false allegations made by the writ petitioner, Mr. Wangdi, learned Senior Counsel further argued that the writ petitioner rushed to the Court without undertaking a research in the matter and if the writ petitioner made such research before filing the present writ petition he ought to have known all these factual and real position, but for his personal interest he filed the present writ petition without any justification. The mere busy body or a meddlesome interloper or wayfarer or officious intervener having absolutely no public interest except for personal gain or private profit either for themselves

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or as proxy of others or for any other extraneous motivation or for glare publicity could not be allowed to abuse the process of Court by initiating vexatious or frivolous litigation. Supporting this contention, Mr. Wangdi learned Senior Counsel has relied upon the decision of the Apex Court rendered in Janata Dal Vs. H.S. Chowdhary and others reported in 1992 Vol. IV SCC 305 and another decision rendered in S.P. Anand Vs. H.D. Deve Gowda and others reported in AIR 1997 SC 272. It was also contended by Mr. Wangdi, learned Senior Counsel that the present writ petitioner did not approach the Court with clean hands inasmuch as he knows the existence of the order of dismissal on withdrawal of the Writ Petition (C) No. 331 of 2002 by the Apex Court before hand and, the two impugned Notifications dated 15th December 2002 had already been withdrawn by another Notification dated 12th August 2002. In this regard, the learned Senior Counsel relied upon another decision of the Apex Court rendered in K.R. Srinivas Vs. R.M. Premchand and others reported in (1994) Vol. 6 SCC 620 and further submitted that a writ petitioner who comes to the court for relief in public interest must come not only with clean hands, but must further come with a clean heart, clean mind and a clean objective, but in the case in hand the present writ petitioner did not do so.

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6. At the hearing Mr. N.B. Khatiwada, learned Additional Advocate General appearing for the respondents No. 1 and 5 submitted that the present Writ Petition was filed by the writ petitioner as publicity interest litigation and also political interest litigation and not as Public Interest Litigation and apart from that, the present Writ Petition is malafide and not maintainable and the same deserves its outright rejection with exemplary cost. Supporting his contention Mr. Khatiwada, learned Additional Advocate General has drawn my attention to the document marked as Annexure A-3 to the Preliminary Objection petition of the Respondent No. 3, a copy of the North Eastern Weekend Review dated 9-15 May 2003 and submitted that the said news item was published by the writ petitioner with a malafide motive and in that news item, it is stated that the case has been filed in the High Court itself on 8th May 2003 and whereas the case was filed on 9th May 2003. According to Mr. Khatiwada, learned Additional Advocate General, the writ petition contains false, frivolous, scandalous and contemptuous allegations made deliberately and intentionally to bring the disrepute to the judiciary which amounts to contempt of Court and such petition which is contemptuous could not be said to be by way of public interest. It was also contended by Mr. Khatiwada, learned Additional Advocate General that the writ

N. B. Khatiwada



petitioner being a politician belonging to Sikkim Sangram Parishad headed by Shri N. B. Bhandari whose criminal revision petition was dismissed by this High Court, with the object of criticizing the present Government intentionally roped the judiciary with the sole object of getting publicity and to discredit the judiciary. The learned counsel further contended that the Respondent No. 2 had drawn the house rent allowance and conveyance allowance under the related Government Notifications dated 15th December 1998 which were later on withdrawn by the State Government by Notification dated 12th August 2002. The Hon'ble Supreme Court had also dismissed the Writ Petition (C) No. 331 of 2002 on withdrawal where the issues involved are the same issues involved in the present Writ Petition and that being the position the present Writ Petition is also barred by principle of res-judicata and this ground alone, the present Writ Petition deserves its outright dismissal. Mr. Khatiwada, learned Additional Advocate General also argued that the present Writ Petition is not a Public Interest Litigation as the subject matter involved herein is not covered by the guidelines laid down by the Hon'ble Supreme Court. Supporting his contention, Mr. Khatiwada had relied upon a decision of the Gauhati High Court referred in Pranatosh Roy and others Vs. State of Assam and others reported in AIR 2000 Gauhati 33.

N. B. Bhandari



It is not the duty of the Court while exercising its jurisdiction under Article 226 of the Constitution of India to weigh the pros and cons of the policy of the Government or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it. In this regard the learned counsel cited a decision of the Apex Court rendered in State of Punjab and others Vs. Ram Lubhaya Baagga, etc. etc. reported in AIR 1998 SC 1703. It is the duty of the court to stop influx or unworthy petition filed in the form of public interest litigation, Mr. Khatiwada argued and in this connection he cited a decision of Gujarat High Court rendered in Kishorbhai D. Panchal Vs. Chief Secretary and reported in AIR 2003 Gujarat 43.

7. Keeping in view of the existing facts and circumstances of the case as well as submission so far advanced by the learned counsel for the parties present, I am of the view that this Court require to examine and to consider the merits of the case and also questions of maintainability of the present case as raised by the respondents concerned in their preliminary objection petitions. Now this Court is to see and examine as to whether the writ petitioner could make out a prima facie case of public interest litigation and, whether the reliefs sought for by the writ petitioner in this writ petition

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can be granted and whether the writ petitioner has enforceable legal right in the instant case or not.

8. It is an admitted position that the writ petitioner did not file the counter-affidavit or any written objection to the preliminary objection filed by the respondent No. 3 as well as the respondents No. 1 and 5 despite an opportunity for filing of the same was afforded by this Court. It is also not disputed that one Gulshan Rai Nagpal initially questioned the validity of the impugned Notifications dated 15th December 1998 in the connected Writ Petition (C) No. 331 of 2002 before the Apex Court and the Hon'ble Supreme Court dismissed the said Writ Petition as withdrawn vide order dated 2nd December 2002 and relevant portion of the order is quoted below: -

"UPON hearing counsel the court made the following

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In view of the subsequent order of the State Government withdrawing the facilities in question, the writ petition is dismissed as withdrawn."

Such dismissal of the said Writ Petition was made in view of the subsequent order dated 12th August 2002 as in Annexure

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P-5 to the Writ Petition issued by the State Government withdrawing the facilities in question.

9. From the available materials on record it is also revealed that the statements made in paragraphs 6, 7, 8, 10, 11 and 12 in the present Writ Petition are in verbatim reproduction of paragraphs 4, 5, 6, 10, 11 and 12 of the Writ Petition (C) No. 331 of 2002 filed in the Hon'ble Supreme Court of India and paragraphs 13 and 14 of the present Writ Petition are modified version of paragraph 18 of the said Writ Petition (C) No. 331 of 2002. For highlighting the facts in existence mentioned above, paragraphs 10 and 11 of the present Writ Petition as well as the paragraphs 10 and 11 of the Writ Petition (C) No. 331 of 2002 are quoted below: -

Paragraphs 10 and 11 of the present Writ Petition

"10. That after Respondent No. 2 was elevated as permanent Judge of the High Court (who joined the post in February 1999) he has been in occupation of a well-furnished, spacious official residence (Bungalow No. 11) situated in the VIP Colony provided by the Government. The Petitioner states that in spite of occupying a well furnished official residence, provided by the Government, the Respondent No. 2 herein has drawn house rent allowance at the rate of Rs.10,000/- per month in separate bills, from the month of assuming the post till 11.08. 2002.

N. J. Cui



11. That as a pretext to draw house-rent at the rate of Rs.10,000/- per month, in spite of occupying a well furnished official residence, a Notification dated 15.12.1998 was got issued by the Respondent No. 1 on the incorrect and dishonest plea that since a befitting and suitable official residence could not be provided, the Hon'ble Judges would be entitled to draw house rent allowance at the rate of Rs.10,000/- per month and they would pay rent at the rate of Rs.1,000/- only per month for the official residence in occupation.

A photocopy of the said Notification dated 15.12.1998 is annexed hereto and marked as **ANNEXURE - P-2 & P/3.**

Paragraphs 10 and 11 of Writ Petition (C) No. 331 of 2002.

"10. After Hon'ble Mr. Justice Dayal was elevated as permanent judge of the High Court of Sikkim, he occupied furnished official residence provided by the Govt. The Hon'ble Justice has been in occupation of a well-furnished, spacious official residence situated in the VIP Colony where the residence of Chief Minister and other VIPs are located. The petitioner states that in spite of occupying well-furnished official residence, provided by the government, both the Hon'ble Judges have been drawing house rent allowance @ Rs.10,000/- per month in separate bills.

11. That it may be stated that as a pretext to draw house rent @ Rs.10,000/- per month, in spite of occupying well-furnished official residence, a

N. J. Chiu



notification dated 15.12.1998 was got issued by the government on the incorrect and dishonest plea that since befitting and suitable official residence could not be provided, the Hon'ble Judges would be entitled to draw house rent allowance @ Rs.10,000/- per month and they would pay rent @ Rs.1,000/- per month for the official residence in occupation.

Annexure P-1. A true copy of the said Notification dated 15.12.1998 is annexed hereto and marked as Annexure P-1."

11. From these existing facts, it appears to me that the present writ petitioner was/is quite aware of the filing of writ petition being Writ Petition (C) No. 331 of 2002 before the Hon'ble Supreme Court and dismissal of it as well as the reliefs sought for therein. It is a fact that the Writ Petition (C) No. 331 of 2002 was dismissed on 2nd December 2002 as withdrawn in view of the subsequent order dated 12th August 2002 and that the issues involved in the Writ Petition (C) No. 331 of 2002 and that of the present Writ Petition are almost the same and similar issues.

12. No one disputed about the existence of notifications as in Annexure P-2 and P-3 and P-5, that is, the impugned Notifications dated 15th December 1998 and Notification dated 12th August 2002 which are relevant in the instant case and accordingly these are quoted below: -

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ANNEXURE - P/2

GOVERNMENT OF SIKKIM

HOME DEPARTMENT

GANGTOK

No. 76/HOME/98

Dated 15/12/1998.

NOTIFICATION

The State Government of Sikkim is pleased to allow the Hon'ble Judges, including the Hon'ble Chief Justice of the High Court of Sikkim to draw a conveyance allowance of Rs.10,000/- (Rupees ten thousand) only per mensem in lieu of any official vehicle (s) including pool vehicle either of the High Court or of the State Government.

By Order and in the name of Governor.

SONAM WANGDI, IAS

CHIEF SECRETARY ”

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ANNEXURE P/3

GOVERNMENT OF SIKKIM

HOME DEPARTMENT

GANGTOK.

NO. 77/HOME/98

Dated 15/12/1998.

N. J. Chib



NOTIFICATION

Since suitable and befitting official residence cannot be provided at present to Hon'ble Judges and Hon'ble Chief Justice, the State Government of Sikkim is pleased to allow the Hon'ble Judges, including the Hon'ble Chief Justice of the High Court of Sikkim to pay a rent of Rs.1,000/- (Rupees one thousand) only per mensem as rent for the temporary government accommodation provided to them. The Hon'ble Judges will however, draw the house rent allowance as admissible to them till such time as suitable and befitting official residence are constructed.

By order and in the name of Governor.

SONAM WANGDI, IAS
CHIEF SECRETARY "

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ANNEXURE P/5

GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK.

NO. 30/HOME/2002

Dated 12th August, 2002

NOTIFICATION

The State Government is pleased to notify that by Notification No. 9/HOME/2002 dated 28/2/2002 which

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came into effect from 1st April, 2002, the Forest Guest House at Balwakhani, Gangtok has since been declared as the official residence of the Hon'ble Puisne Judge of High Court of Sikkim thereby superseding Notification No. 5/Home/99 dated 22/1/1999 and Notification No. 64/Home/99 dated 1/10/1999.

Notification No. 77/Home/98 dated 15/12/98 and Notification No. 76/Home/98 dated 15/12/98 hereby stand withdrawn.

Consequently, Bungalow No.11 in VIP colony, Gangtok is declared as the official residence of the Hon'ble Chief Justice of Sikkim High Court until permanent official residence of Hon'ble Chief Justice is constructed. Hon'ble Chief Justice shall be provided with staff car in terms of section 22 B of the Judges (Conditions of Services) Act, 1954.

This notification shall come into force with immediate effect.

By Order and in the name of the Governor.

S.W. Tenzing
Chief Secretary. "

13. The parties also do not dispute the fact that the Respondent No. 2 assumed the charge of Chief Justice of this High Court by taking oath on 3rd February 1999. This prima

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facie shows that those related impugned Notifications dated 15th December 1998 were in existence prior to taking of oath by the Respondent no. 2 on 3rd February 1999 as Chief Justice of this High Court and he had drawn house rent allowance and conveyance allowance in terms of the impugned notifications dated 15th December 1998. Now a question arised that by reasons of the related Notifications issued by the Government, Respondent No. 2 has been allowed to get house rent and conveyance allowances and whether such drawal of house rent and conveyance allowance amounts to appropriation of Government money and further, whether it amounts to personal gain of the Respondent No. 2 in the eye of a man of reasonable prudence? The simple answer would be "No". According to me, the doctrine of "de-facto" would apply and the same will sprang up in the instant case. However, it is made clear that it is under the wisdom and domine of the State Government to look into the matter and take appropriate decision for which it is needless to mention that the State Government had withdrawn such facilities under a related Notification dated 12th August 2002 as in Annexure P-5 to the Writ Petition. I am also of the view that the Respondent No. 2 had drawn the house rent and conveyance allowances under the related orders issued by the authority concerned as discussed above and it was bonafide

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on the part of the Respondent No. 2 to get benefits under the said Notifications.

14. So far the issue/question of tampering and manipulation of Certificate of Registration of Government vehicle No. SK-02/0006 and violation of Section 47 and 146 of the Motor Vehicles Act, 1988 by the respondent No. 2 as raised and contended by the writ petitioner involves complicated and disputed question of facts, and as such this Court while exercising its jurisdiction under Article 226 of the Constitution of India generally and ordinarily should not enter into the merit of it and Court is not supposed to make a probing enquiry like an original or appellate authority as the same is to be dealt with by the competent authority under the relevant provisions of law laid down under Motor Vehicles Act and Rules. However, it appears to me that the respondents particularly respondent No. 3 had clarified such controversy in the Preliminary Objection petition at paragraph 11 of it and according to me such clarification is reasonable and it has its weight and, relevant statements in the form of clarification of the respondent No. 3 is reproduced as hereunder which I am satisfied: -

"11. That without prejudice to what have been stated above, it is necessary to place on record the

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following facts leading to the issue of aforesaid notifications by the State Government.

A. **Conveyance Allowance:**

- (i)
- (ii)
- (iii) The allegation in the Writ Petition that the Hon'ble Chief Justice in spite of being provided with an official vehicle has been drawing conveyance allowance is factually incorrect, unfounded and baseless. The Hon'ble Chief Justice had been using his Lordship's personal car till allotment of the official vehicle by the State Government. It is stated that the vehicle which was attached to the previous Chief Justice of the Sikkim High Court as official vehicle since 1990 was also NE 118 (off white colour) bearing engine No. 025651, chassis No. 26489 with the year of manufacture as 1990 and its registration number was SK-02/0006. After Chief Justice Thanikkachalam demitted office in 1997 that vehicle being an old one and not fit for use of the Chief Justice was allotted to the Joint Registrar in the year 1998 before the present Hon'ble chief Justice came to Sikkim in February 1999. When the Joint Registrar proceeded to State Government on deputation, the said vehicle was surrendered by the High Court to the state Government. Subsequently the same NE 118 bearing Registration No. SK-02/5907 was allotted to the Sikkim State Consumer Disputes Redressal Commission. The personal vehicle of the Chief Justice, NE 118 off white colour at the time he came from West Bengal to Sikkim, bore No. MH 01/P-5948. Prior to

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taking oath on 3.2.1999 as Chief Justice of Sikkim High Court the present Chief Justice was a Judge of the Calcutta High Court. He was having his personal vehicle NE 118 off white colour bearing No. MH 01/P-5948 bearing chassis No. 060211, engine No. 059242 with the year of manufacture as 1994. He was drawing conveyance allowance in West Bengal for that vehicle as was admissible under the relevant Notification which was applicable to the Judges of the High Court of Calcutta. On appointment as Chief Justice of Sikkim High Court, Hon'ble Justice Dayal brought that vehicle to Sikkim.

(iv) In Sikkim Hon'ble Shri Justice Dayal applied for change of Registration Number and allotment of registration number by Sikkim Transport Authority. The Transport Authority allotted No. SK-02/0006. No official vehicle was available in the High Court and was neither provided by the High Court nor by the State Government to Hon'ble Shri Justice Dayal for use and he continued to use his private NE 118 car. It was in August 2002 that an official vehicle was provided by the State Government to Hon'ble Justice R. Dayal. Thereupon, Shri Justice Dayal sold that vehicle to Shri Bimal Kumar Sarma Choudhury of Siliguri. Transfer of ownership of vehicle is marked Annexure A-4. Insurance Policy in respect of the vehicle MH 01-P 5948 for the period 3.12.1997 to 2.12.1998 is marked Annexure A-5, Insurance Policy for the period 27.3.1998 to 26.3.1999 is marked Annexure A-6, token tax bearing No. D-723252/30 March 1998 issued by Calcutta

[Handwritten signature]



Authority is marked Annexure A-7. Form of application for "No Objection Certificate" and grant of certificate is marked Annexure A-8, letter No. 7323/HCS dated 12.2.1999 addressed to Senior R.T.O. Motor Vehicle Department, Government of Sikkim for allotment of Registration number is marked Annexure A-9, letter No.7710-11/HCS dated nil addressed to Secretary, Home Department, Government of Sikkim for allotment of Registration No. SK-02/0006 to the private vehicle of the Hon'ble Chief Justice is marked Annexure A-10, letter No.1294/H/P/49 dated 1.4.1999 addressed to Registrar General, High Court of Sikkim by Joint Secretary (Protocol), Home Department regarding approval for allotment of SK-02/0006 to the personal vehicle of the Chief Justice is marked Annexure A-11, B.R. No. R-823894 for deposit of Rs.22/- is marked Annexure A-12 copy of Blue Book (8 pages) is marked Annexure A-13 and application for 'No Objection Certificate' for transfer of vehicle to Shri Bimal Kumar Sarma Choudhury, Siliguri is marked Annexure A-14.

(v) The allegation made by the petitioner that Justice Anup Deb used the official NE until Hon'ble Shri Justice Dayal took oath as Chief Justice of this Court is a blatant lie. Hon'ble Shri Justice Deb never used the NE 118 car 1990 model official car as the same having been very old was allotted to the then Joint Registrar late Shri D.C. Roy and Ambassador No. SK-02/0035 was under his use.

Signature



Further, when new official vehicle was provided to Hon'ble Chief Justice in the year 2002 the same Registration No. SK-02/0006 which was allotted to the personal vehicle of the Chief Justice has been allotted to the new official vehicle by the State Government."

15. Next point to be considered and examined is as to whether the present writ petition is in the nature of PIL or not. In this regard, it is note-worthy to highlight the fact that the Hon'ble Supreme Court circulated a related guidelines to be followed for entertaining letters/petitions received in the Court as PIL and it contains 10 main guidelines and other 5 matters which are not to be entertained as PIL. Those are quoted below: -

- "1. Bonded Labour matters.
2. Neglected children.
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of Labour Laws (except in individual cases).
4. Petitions from Jails complaining of harassment, for premature release and seeking release after having completed 14 years in Jail, death in Jail (sic) released on personal bond, speedy trial as a right.
5. Petitions against police for refusing to register a case, harassment by police and death in police custody.

N. J. Cui



6. Petitions against atrocities on women, in particular harassment of bride, bride-burning, rape, murder, kidnapping, etc.
7. Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to Scheduled Castes and scheduled Tribes and economically backward classes.
8. Petitions pertaining to environmental pollution, disturbances of ecological balance, drugs, food adulteration, maintenance of heritage and culture, antiques, forest and wild life and other matters of public importance.
9. Petitions from riot-victims.
10. Family pension"

Matters which are not to be entertained as PIL are indicated below: -

- "1) Landlord-Tenant matters.
- 2) Service matter and those pertaining to Pension and Gratuity.
- 3) Complaints against Central/State Government Deptts. and Local Bodies except those relating to item Nos. (1) to (10) above.
- 4) Admission to medical and other educational Institutions.
- 5) Petitions for early hearing of cases pending in High Courts and Subordinate Courts."

16. I have perused the statements/allegations made by the petitioner in his writ petition and also the available

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materials on record. After proper application of mind in this matter, I am of the view that the writ petition is not covered by the main 10 guidelines as highlighted above and I am of the further opinion that the writ petitioner did not approach the Court with clean hands and his approach before this Court with the present writ petition is not for clean objective and apart from that, there was wide publication of the filing of this writ petition and such publication even went to the extent that the writ petition was alleged to have been filed by the writ petitioner on 8th May 2003, but in fact, the writ petition was filed on 9th May 2003 afternoon, but the same news sprang up from the early morning of 9th May 2003 and moreover, the present writ petition was filed by the petitioner at the verge of retirement of the Respondent No. 2, Chief Justice of High Court of Sikkim as his superannuation falls on 17th May 2003. I made the above observation keeping in view of the existing facts and circumstances of the case and such observations is based on the materials available on record before this Court in the present case.

17. As discussed above, it is a fact that the writ petition (C) No. 331 of 2002 was dismissed on withdrawal in view of the subsequent notification dated 12th August 2002 issued by the State Government withdrawing the facilities of

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house rent and the conveyance allowance which was once afforded to the Chief Justice and the Puisne Judge under the impugned Notifications dated 15th December 1998 and in view of it, the Apex Court disposed of the said Writ Petition thus allowing the writ petitioner concerned to withdraw the case. It is well settled that in Public Interest Litigation cases the petitioner is not entitled to withdraw his/her petition at his/her sweet-will unless the Court sees reason to permit withdrawal. In granting the permission the Court would be guided by considerations of public interest and would also ensure that it does not result in abuse of the process of law. Courts must guard against possibilities of such litigants settling the matters out of the court to their advantage and then seeking withdrawal of the case. There are umpteen ways in which the process can be abused and the Courts must be aware of the same before permitting withdrawal of the petition. This is not to say that this was one such case. According to me, the Apex Court had considered the matter and the Writ Petition (C) No. 331 of 2002 was dismissed as withdrawn after considering the nature of the case. So far the question of validity and propriety of impugned notifications dated 15th December 1998 Annexure P-2 and P-3 are concerned, I am of the view that it would not be proper on the part of the Court to examine the validity of Government policy

N. J. Cui




under the impugned notifications more into depth and to sit like an appellate authority in the matter after the said impugned notifications were withdrawn by the authority concerned under the related notification dated 12th August 2002 as in Annexure P-5 to the writ petition. In this regard a reference can be made to a decision of the Apex Court referred in State of Punjab and others Vs. Ram Lubhaya Bagga etc. reported in AIR 1998 SC 1703, wherein the Apex Court held as under: -

“So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any Court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional statutory or any other provision of law. When Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive.”

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18. For the reasons, discussions and observations made above, I am of the view that the writ petitioner could not make out a prima facie case and apart from that, there is no sufficient materials on record for treating the present writ petition as Public Interest Litigation (PIL) as the present Writ Petition virtually amounts to Publicity Interest Litigation and, this Court should not allow its due process of law to be abused by the present writ petitioner for his extraneous motivation or and for glare of publicity. Suffice is made with the above observation for not entertaining the present writ petition.

19. In the result, the Writ Petition is devoid of merit and accordingly, it is dismissed with cost of Rs.10,000/-. The cost shall be paid by the petitioner and such cost shall be treated as part of the fund of Sikkim State Legal Services Authority for which the petitioner shall deposit the said cost of Rs.10,000/- with the Registry of this Court within 15 days from today and after such deposit of cost, the Registrar General of this Court shall make necessary arrangement for deposit of the said cost of Rs.10,000/- with the authority concerned at the earliest.


(N.S. Singh)
Judge
17-05-2003