



1

Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
02.	02.5.06	<p>Mr. J.B. Pradhan, learned Government Advocate, no sooner Mr. Pravakar Dewan, learned Counsel for the Petitioner stood up to address us, raised objection about maintainability of this Writ Petition. He contended that this is really a third Writ Petition for grant of same reliefs. The second Writ Petition No. 33 of 2005 was withdrawn by the Petitioner before this Court on 12.08.2005 without giving him liberty to sue afresh which is clear from the order of this Court. He also referred to the Judgment of the Apex Court in M/s Sarguja Transport Service vs. State Transport Appellate Tribunal, M.P., Gwalior and others, (1987) 1 SCC 5.</p> <p>[2] Mr. Dewan, on the other hand, contended that as the Petitioner was not served with the Government Office Order as contained in Letter dated 09.12.2004 and thereby, he is justified in filing this Writ Petition.</p> <p>[3] We are not convinced with the arguments of Mr. Dewan and inclined to accept the argument of Mr. Pradhan.</p> <p>[4] In his first Writ Petition bearing No. W.P. (C) No. 30 of 2004, his prayer was to command Respondent Nos. 1 to 4 to discharge their statutory duties by demolishing the unauthorized illegally constructed building by Respondent No. 6 on Plot No. 83 at Chandmari, Gangtok, cast on them under Section 6 of Act 42 of 1991; to prosecute the office bearers of Respondent No. 6 for gross contravention of the provisions of Section 3 of the said</p>	



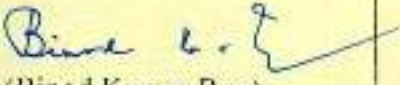
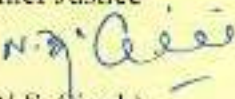
No. of Order	of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>[5] The Petitioner filed second Writ Petition bearing Writ Petition (C) No. 33 of 2005, for the same reliefs, which was heard and disposed of having been withdrawn on 12.8.2005 without giving liberty to the Petitioner to sue afresh. A copy of this order has been annexed as Annexure P-19 to this Writ Petition.</p> <p>[5.1] Relevant part of the order dated 12.08.05, reads as under: -</p> <p>“We have perused the document Annexure R-I which is a Govt. office letter dated 9-12-2004 showing the factum of communication of the related decision of the authority concerned to the present writ petitioner in the year 2004. At the hearing, Mr. Tashi Wangdi Phempo contended that the office letter was not issued under the seal and signature of the Chief Secretary concerned. A bare perusal of the office letter dated 9-12-2004 shown that the Joint Secretary, Home (II) has been directed by the appropriate authority to inform the petitioner about the matter in terms of the related order passed by this Court on 9-9-2004 in the connected Writ Petition (C) No. 30 of 2004. We are quite astound to know that the petitioner did not append a copy of this office letter dated 9-12-2004 to the writ petition, though the petitioner was quite aware of the existence of this letter. Be that as it may, we are not expressing anything on merit as suffice is made for disposal of this case, on the prayer of the petitioner for withdrawal of the writ petition. In the result, the petition is closed on withdrawal but, no order as to costs.”</p> <p>[6] In this Writ Petition, apart from repeating the prayers made in the earlier two Writ Petitions, the petitioner has added one more prayer namely, to quash the notifications dated 24.9.98 and 26.10.98, appending their copy as Annexure P-4 and P-5 respectively, which were appended by him in his earlier petitions.</p>	





Order No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>Act; to quash the order dated 26.12.2002 passed by the Principal Secretary of the Land Revenue as contained in his letter dated 26.12.2002 addressed to Pholasolsa Development Committee, Gangtok in regard to construction of the Community Centre and to further direct Respondent Nos. 1 to 3 to act upon the recommendations of Respondent No. 5 (the Ecclesiastical Committee of the Government of Sikkim) made in its Meeting dated 29.09.2001, as contained in Annexure P-8, appending copies of the Notifications dated 24.09.98 and 26.10.98 as Annexures P-1 and P-2 respectively.</p> <p>[4.1] This Writ Petition came up for admission before a Division Bench comprising the then Hon'ble Chief Justice and one of us (N.S. Singh, J) on 09.09.2004. It was refused to be admitted in the back drop of pendency of the representation before the Chief Secretary in regard to which no decision has been taken though and a direction was issued to the Chief Secretary to consider and dispose of the said representation, if pending, as expeditiously as possible preferably within two months of the date of communication of this order, which is apparent from the perusal of the copy of the order as contained in Annexure P-17, appended to the instant Writ Petition.</p> <p>[4.2] It appears that the Chief Secretary disposed of the representation.</p>	



Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
		<p>[7] In view of the observations and findings ^{recorded} rendered by the Bench hearing the second Writ Petition of the Petitioner the relevant part of which has been extracted as above, admittedly liberty was not granted to the Petitioner to sue afresh after the withdrawal of his second Writ Petition. The ratio laid down in M/s Sarguja Transport Service supra squarely covers this case, which is binding on us. Addition of prayer to quash the notifications are of no help now.</p> <p>[8] Accordingly, we dismiss this Writ Petition with cost of Rs.5,000/- (Rupees five thousand) to be deposited by the Petitioner within three months from today. The cost, if deposited, shall be handed over to the office of the Bar Association of the High Court to give benefit to the younger lawyers and/or enrichment of its Library.</p> <p>[9] Let a copy of this order be handed over to the learned Government Advocate.</p> <p style="text-align: right;"> (Binod Kumar Roy) Chief Justice</p> <p style="text-align: right;"> (N.S. Singh) Judge</p>	