



Serial No.	Date	Order (s) with Signature (s)
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14.	06.07.2010	<p style="text-align: center;"><b><u>BEFORE</u></b></p> <p style="text-align: center;"><b>HON'BLE THE CHIEF JUSTICE MR. JUSTICE BARIN GHOSH</b></p> <p>Present : Mr. S. K. Sarraf, Advocate for the petitioners.</p> <p>Mr. J. B. Pradhan, Public Prosecutor with Mr. Karma Thinlay Namgyal, Addl. Public Prosecutor and Mr. Santosh Kr. Chettri, Assistant Public Prosecutor for the respondent.</p> <p style="text-align: center;">*****</p> <p>The subject matter of the present writ petition is the cancellation of the certificates of identification of the petitioners, which have been affected by an order dated 7<sup>th</sup> March, 2008, passed by the Additional District Collector, East at Gangtok, Sikkim.</p> <p>2. It appears that on 17<sup>th</sup> September, 2004, a first information report, registered as case no.RC-8/2004, was registered with the Sikkim Vigilance Police Force S.V.P.S. Branch, where it was alleged that the petitioners obtained certificates of identification bearing serial nos. 2927/DC/E and 2928/DC/E both dated 27<sup>th</sup> April, 1989, fraudulently from East District Collectorate, Gangtok, claiming to be sons of one Shri Man Bahadur Gurung alias Kam Singh Gurung, who in fact is the maternal grand father of the petitioners. It was alleged in the said first information report that the petitioners have thus committed offences punishable under various provisions of the Indian Penal Code. The said first information report was investigated upon, whereupon the investigating officer filed final report dated 18<sup>th</sup> May, 2006 under Section 173 of the Criminal Procedure Code. The said final report was filed in the Court of the Chief Judicial Magistrate, East and North Sikkim at Gangtok. In the said</p>






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		<p>final report it was stated that the father of the petitioners is one Shri Chandra Bahadur Gurung of Glenburn Tea Estate, District Darjeeling, West Bengal, and that Late Man Bahadur Gurung is the maternal grandfather of the petitioners, and, as such, the petitioners were not entitled to certificates of identification. It was also stated that in course of investigation it was found that at the time of obtaining the certificates of identification, both the accused persons were minors. It was stated that there is no proof against any other person who helped the petitioners to obtain the certificates of identification in their names due to absence of the process sheet and other documents, i.e., forms, verification reports, which could not be traced in the office of the District Collector, East. The final report was submitted for closure of the case. The said final report was accepted by the Chief Judicial Magistrate, East and North at Gangtok in Vigilance Case No.RC-8/2004 and, accordingly, the criminal case registered as Vigilance Case No.RC-8/2004 stood concluded.</p> <p>3. Subsequently, referring to Vigilance Case No.RC-8/2004, show cause notices were issued calling upon the petitioners as to why certificates of identification issued in their favour should not be cancelled. The petitioners responded to the show causes whereupon their certificates of identification have been cancelled by the order referred to above impugned in the present writ petition. Subsequent thereto, again a show cause has been issued by the employers of the petitioners calling upon them to show cause as to why their services should not be cancelled for they obtained services on the strength of the cancelled certificates of identification.</p>





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		<p><b>4.</b> The Vigilance Case No.RC-8/2004 stood closed on 4<sup>th</sup> September, 2006 when the Chief Judicial Magistrate, East and North at Gangtok accepted the final report, making a prayer for closure of the said case. It was unjust and improper to refer to the said Vigilance Case No.RC-8/2004 in any subsequent correspondence the authorities had with the petitioners. In the show cause notices referred to above as well as in the impugned order, Vigilance Case No.RC-8/2004 has not only been referred but the manner in which the same has been referred, suggests that the same might have influenced in issuance of the show causes as well as making of the impugned order. This should never have had been done, in as much as, before the show causes were issued and the impugned order was passed, the said Vigilance Case stood completely closed for all practical purposes.</p> <p><b>5.</b> In the circumstances, this writ petition is disposed of by declaring that the Vigilance Case No.RC-8/2004 stood closed on 4<sup>th</sup> September, 2006 and also by quashing the show cause notices referred to above, as well as the order of the Additional District Collector, East at Gangtok, Sikkim dated 7<sup>th</sup> March, 2008, along with the show cause issued by the employers referred to above. This order will not however prevent the District Collector, East or any other person(s) entitled to interfere with the subject certificates of identification to take such steps as he or they may be advised in relation to the said certificates of identification after giving appropriate prior notice to the petitioners and after giving them appropriate opportunity of hearing. Only thereupon if it is thought fit, the employers may take such further steps as they may be advised.</p> <p style="text-align: right;"> <b>Chief Justice</b> <u>06.07.2010</u></p>

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