

**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Civil Extra Ordinary Jurisdiction)

**DATED : 20.09.2012**

**CORAM**

**HON'BLE THE CHIEF JUSTICE  
MR. JUSTICE PERMOD KOHLI  
HON'BLE MR. JUSTICE S.P. WANGDI, JUDGE**

**Writ Petition (C) No. 43 of 2011**

1. Shri Janga Bahadur Chettri,  
S/o Late Kharga Bahadur Chettri,
2. Shri Khagendra Kumar Chettri,  
S/o Janga Bdr. Chettri,
3. Shri Purna Kumar Chettri,  
S/o Janga Bdr. Chettri,
4. Shri Boudha Chettri,  
S/o Janga Bdr. Chettri,
5. Shri Narendra Chettri,  
S/o Janga Bdr. Chettri,

All the above named petitioners are:  
R/o Palzor Stadium Road,  
Gangtok, East Sikkim.

... Petitioners

-versus-

1. State of Sikkim,  
Through the Chief Secretary,  
Government of Sikkim,  
Gangtok, Sikkim.

2. The District Collector,  
The Office of the District Collectorate,  
Gangtok, East Sikkim.
3. Smt. Harkamaya Chettri,  
W/o Late Kharga Bahadur Chettri,  
R/o Pani House,  
Gangtok, East Sikkim.

...Respondents

For petitioners : M/s. Jorgay Namka, Zola Megi,  
Neela Pradhan and Chenga Bhutia,  
Advocates for the Petitioner.

For respondent : M/s. J.B. Pradhan, Addl.  
Advocate General with Karma  
Thinlay, Govt. Advocate and S.  
K. Chettri, Asstt. Govt. Advocate  
for the State-respondents.

M/s. T.B. Thapa, Sr. Advocate  
with Yangchen D. Gyatso,  
Advocate for respondent No. 3.

## **J U D G M E N T**

**Permod Kohli, CJ**

This petition is directed against the Order dated 20.05.2011 passed by the District Collector, East District, Gangtok whereby the Certificate of Identification (for short, 'COI') issued in favour of the petitioner No. 1, bearing No. 4593/DCE dated 12.12.1990, has been cancelled and consequently the following Certificates of Identification issued

in favour of the petitioners No. 2 to 5, having been issued on the basis of Certificate of Identification of petitioner No. 1, have also been ordered to be cancelled: -

1. COI bearing No. 4591/DCE dated 12.12.1990 issued in the name of Shri Khagendra Kumar Chettri.
2. COI bearing No. 1583/DCE dated 26.02.1996 issued in the name of Shri Purna Kumar Chettri.
3. COI bearing No. 3691/DCE dated 11.12.2003 issued in the name of Shri Narendra Chettri.
4. COI bearing No. 89/DCE dated 18.01.2007 issued in the name of Shri Boudha Chettri.

2. Briefly stating the facts leading to filing of the present petition are that the petitioner herein, claiming to be the son of late Kharga Bahadur Chettri, was issued a Certificate of Identification dated 12.12.1990. Even prior to issuance of the aforesaid Certificate of Identification the petitioner had joined the State Government service and served with effect from 27.09.1974 to 28.02.2011 when he retired as Assistant Sub Inspector, Chungthang Police Station. In the year 2001 a Sale/Gift Deed was sought to be registered in favour of the petitioner No. 1. Respondent No.

3, who happens to be the wife of late Kharga Bahadur Chettri, who is claimed to be the father of petitioner No. 1, objected to the registration of the Gift Deed and also complained against the validity of Certificate of Identification issued in favour of the petitioner No. 1. It was also alleged by respondent No. 3 that the petitioner No. 1 is not the son of late Kharga Bahadur Chettri and prayed for cancellation of his Certificate of Identification. On the basis of above complaint, proceedings were initiated for cancellation of Certificate of Identification of petitioner No. 1 and the Assistant Collector, East, Gangtok vide its Order dated 03.12.2009 cancelled the Certificate of Identification of the petitioner No. 1 and the order having been confirmed by the Additional District Magistrate vide Office Order dated 30.03.2010, the petitioner assailed the above Orders in Writ Petition (C) No. 17 of 2010 before this Court *inter alia* challenging the jurisdiction of the authorities passing the impugned order. The contention of the petitioner prevailed, this Court vide its Order dated 27.08.2010 allowed the writ petition with the following observations/ directions: -

"8. As it is clearly conceded by all the parties that the impugned proceeding of Assistant Collector, East suffers for want of jurisdiction, while quashing the impugned order dated 03.12.2009 of the Assistant Collector, East as well as the consequential impugned

proceedings dated 30.03.2010 of the Additional District Collector, East and remitting the matter to the competent authority, we do not propose to go into the merits of the case as well as the rival contention of the parties, which we leave to the decision of the appropriate authorities.

9. Accordingly, the impugned order dated 03.12.2009 of the Assistant Collector, East as well as the consequential impugned proceedings dated 30.03.2010 of the Additional District Collector, East, both stand quashed and the matter is remitted to the competent authority for holding a fresh enquiry and to pass final orders after giving fair and reasonable opportunity to both the parties to place their respective case before the competent authority concerned, of course, without being prejudiced by any of the observations made in the present writ petition. The competent authority shall comply with the above direction of this Court within a period of 90 days from the date of receipt of this order."

3. The matter having been remitted back to the competent authority, fresh proceedings were initiated. The District Collector, East, after hearing the parties passed a fresh Order dated 20.05.2011 in Misc. Case No. 37 of 2010 setting aside the Certificates of Identification issued in favour of the petitioners, as noticed hereinabove. While passing the impugned order it has been noticed by the District Collector, East that earlier the petitioner had claimed to be the adopted son of late Kharga Bahadur Chettri in the proceedings before the Assistant Collector, Gangtok and made a statement to this effect. It was this stand of the petitioner No. 1 that the High Court in its judgment dated 27.08.2010 referred to the Notification dated 25.01.2006 which deals with the requests

for issue of Certificate of Identification by persons other than the direct descendents of SSC/COI holders. The petitioner No. 1 thereafter claimed himself to be the biological son of late Kharga Bahadur Chettri. It has also been observed in the impugned order that late Kharga Bahadur Chettri applied for issuance of Sikkim Subject Certificates for himself and his descendants and he had mentioned the names of only his wife and four daughters as his family members and the name of the petitioner No. 1 as his son did not find mention in his application.

4. It is pertinent to note that during the pendency of proceedings before the District Collector, the respondent No. 3 made an application asking for DNA test of the petitioner No. 1 with her. The petitioner No. 1, however, objected to the DNA test being carried out with respondent No. 3 and asked for conduct of DNA test with the blood sample of any one of the daughters of respondent No. 3. On refusal of the petitioner to undergo DNA test, the District Collector on the basis of evidence/materials produced before him, passed the impugned order setting aside the Certificates of Identification issued in favour of the petitioners.

5. When this matter came up for consideration before this Court, the petitioner was confronted with the observations made by the District Collector regarding the DNA test. The petitioner No. 1, who was also present in the Court agreed for undergoing the DNA test with his mother i.e. respondent No. 3, who was also present in the Court. On the basis of the consent of the petitioner No. 1 and respondent No. 3, the Additional Advocate General was asked to seek instructions from the concerned authority of the State Government regarding the manner and mode of conducting DNA test in the State, vide Order dated 31.05.2012 and the matter was posted to 01.06.2012. On the adjourned dated Dr. Yogesh Verma, Head of the Department of Pathology, STNM Hospital, Gangtok and Dr. S.D. Sharma, Principal Chief Medico-Legal Consultant, STNM Hospital came and informed the Court that for conducting DNA test the blood sample could be taken at Gangtok and then sent to the concerned Laboratory for testing or in the alternative the parties could be asked to approach the concerned Laboratory at Hyderabad for taking their blood samples for the test. Both the Doctors were asked to seek necessary instructions from the concerned Laboratory at Hyderabad and the matter was again adjourned to 12.06.2012. On seeking instructions the

procedure for conducting DNA test was reported to this Court. After examining the information furnished to the Court by Dr. Yogesh Verma, the parties were directed to fill up necessary forms under the supervision of the Registrar of this Court after being duly identified by their respective counsel. Parties were also directed to report to the Laboratory at Hyderabad on 09.07.2012 at 10.00 am to provide their blood samples. The parties accordingly approached the Laboratory i.e. CDFD, Centre for DNA Fingerprinting and Diagnostics at Nampally, Hyderabad. Their blood samples were taken. The DNA test report has been received in a sealed cover and the same is opened in the open Court. On perusal of the DNA report and the profile of the petitioner No. 1 and respondent No. 3 we find that the progeny of the petitioner No. 1 is not traceable to the respondent No. 3 and it has been scientifically established that the petitioner No. 1 is not the biological son of late Kharga Bahadur Chettri and respondent No. 3, as claimed by him.

**6.** - Apart from the scientific analysis and the findings we have also examined the impugned order passed by the District Collector. The findings of the District Collector are based on appreciation of evidence produced by the parties.



It is pertinent to note that most of the findings are based on documentary evidence produced by the parties before the District Collector. The Collector has rightly drawn the conclusion that the petitioner No. 1 is not the natural descendant of late Kharga Bahadur Chettri. The petitioner No. 1 has been changing his stand as descendant. In earlier proceedings he had claimed to be the adopted son of late Kharga Bahadur Chettri and later on he insisted that he is the biological son of late Kharga Bahadur Chettri borne out of his wedlock with respondent No. 3. This fact has not been established by him on the basis of any reliable evidence. Even the scientific analysis (DNA test) has disproved the stands of the petitioner.

7. Mr. Jorgay Namka, learned counsel appearing for the petitioners submits that the District Collector ignored the evidence produced by the petitioners. We find that the petitioners have not relied upon any documentary evidence and the oral evidence produced by the petitioner did not find favour with the District Collector, who has mostly based his findings on documentary evidence.

8. It is the established law that this Court while exercising the jurisdiction under Article 226 of the

Constitution of India in respect to the orders of administrative authority or quasi judicial orders, does not sit as a Court of appeal to re-appraise the material and evidence. The scope of judicial intervention in exercise of power of review in such matter is limited. The judicial intervention is warranted where the findings of the authority concerned are perverse or there has been gross violation of principles of natural justice or suffers from infraction of any law. We find none of the situations occurring in the present case. We do not find any valid ground to interfere with the findings recorded by the District Collector.

9. In the totality of the circumstances, this petition fails and is hereby dismissed. No order as to costs.

  
( **Permod Kohli** )  
**Chief Justice**  
20.09.2012

  
( **S.R. Wangdi** )  
**Judge**  
20.09.2012

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