

IN THE HIGH COURT OF SIKKIM

CIVIL JURISDICTION

WP(C) (PIL) No. 14 of 20.11.

Tikendra Sharma

Appellants (s)
Petitioner (s)

Versus

State of Sikkim & Ors.

Respondent (s)
Opposite party (s)

Appellant

For Mr. Ashok Pradhan
Petitioner
(Advocate (s))

Respondent

For Mr. J.B. Pradhan, Addl. Advocate General with
Mr. Karma Thinlay, Govt. Advocate and Mr. S.K.
Chettri, Asstt. Govt. Advocate
Opposite Party
(Advocate (s))

Serial No.	Date	Order (s) with Signature (s)
1	2	3
01.	18.03.11	<p>BEFORE</p> <p>HON'BLE THE CHIEF JUSTICE MR. JUSTICE P.D. DINAKARAN</p> <p>Present: Mr. Percy Kavina, Sr. Advocate with Mr. Ashok Pradhan, Advocate for the petitioner.</p> <p>Mr. Karma Thinlay Namgyal, Government Advocate for respondent No. 1.</p> <p>...</p> <p>Detail Judgment, vide separate sheets.</p> <p>The writ petition stands disposed of.</p> <p>Chief Justice 18.03.2011</p>

judgment.

IN THE HIGH COURT OF SIKKIM AT GANGTOK
(CIVIL EXTRA ORDINARY JURISDICTION)

DATED : 18.03.2011

CORAM

HON'BLE MR. JUSTICE P.D. DINAKARAN, CHIEF JUSTICE

Writ Petition (C) (PIL) No. 14 of 2011

Tikendra Sharma,
Son of Late K.N. Sharma,
R/o Upper Sichey,
P.S. & P.O. Gangtok,
Sikkim.

... Petitioner

-versus-

1. State of Sikkim,
Through Secretary,
Public Health Engineering Department,
Gangtok.
2. Bureau of Indian Standards through
Deputy Director General (Eastern Region),
1/14, CIT Scheme-VII M,
VIP Road, Kankurgachi,
Kolkata-700 054.
3. Director General of Bureau of Indian Standards,
Manak Bhawan,
9, Bahadur Shah Zafar Marg,
New Delhi-110 002.
4. Tata Metaliks Kubota Pipes Limited,
A company incorporated under
the Companies Act, 1956 having its
office at Tata Centre,
43, J.L. Nehru Road,
Kolkata-700 071.

... Respondents



For the petitioner : Mr. Percy Kavina, Sr. Advocate
with Mr. Ashok Pradhan,
Advocate.

For respondent No. 1 : Mr. Karma Thinlay Namgyal,
Government Advocate.

JUDGMENT

Dinakaran, CJ

The matter was taken up for hearing today, on mentioning, at the request of the learned Senior Counsel Mr. Percy Kavina appearing for the petitioner.

2. Heard Mr. Percy Kavina, learned Senior Counsel for the petitioner in detail.

3. The petitioner has set the above Public Interest Litigation on motion with a specific plea that the 4th respondent is manufacturing and marketing Ductile Iron Pipes (D.I. Pipes) in violation of standards prescribed under the Bureau of Indian Standards Act, 1986 and the State of Sikkim, the 1st respondent herein, have also purchased such sub-standard Ductile Iron Pipes for the public consumption and, therefore, the petitioner seeks that:

(a) the State of Sikkim, the respondent No. 1 herein, be forthwith restrained from purchasing D.I. Pipes from Tata Metaliks Kubota Pipes Ltd., respondent No. 4 herein

and respondent No. 4 be further directed to withdraw pipes bearing fake IS marks which are sold and supplied by it to respondent No. 1 which are used for supplying drinking water to people of Sikkim;

(b) respondent Nos. 2 and 3 be directed to forthwith cancel B.I.S. License granted to Tata Metaliks Kubota Pipes Limited, respondent No. 4 herein, and be further pleased to direct respondent No. 4 herein not to use or apply IS Mark till further order as may be passed by this Hon'ble Court;

(c) respondent No. 1 be directed to blacklist Tata Metaliks Kubota Pipes Limited, respondent No. 4 herein, from participating in tender process of any nature whatsoever of respondent No. 1, in the larger public interest as well as public health;

(d) to direct respondent authorities to initiate prosecution against Tata Metaliks Kubota Pipes Ltd., respondent No. 4 herein, under the provisions of India Penal Code more particularly Sections 467 and 420 for applying fake IS Marks and selling substandard DI Pipes to respondent No. 1; and

(e) pending the petition, an appropriate order be passed restraining respondent-BIS Authorities from

granting licence under the BIS Act to respondent No. 4 and the Hon'ble Court further be pleased to restrain respondent No. 4 from participating in any tender process undertaken by respondent No. 1.

4. Mr. Percy Kavina, learned Senior Counsel brought to my notice the order of conviction dated 20.02.2010 made in C.R. No. 700 of 2009 on the file of the learned Judicial Magistrate, 1st Class, 3rd Court, Midnapore Sadar (W.B.) and the order of the Calcutta High Court dated 05.02.2010 made in W.P. No. 16603 (W) of 2009 with W.P. 14315 (W) of 2009 with W.P. 12814 (W) of 2009. According to Mr. Percy Kavina, learned Senior Counsel, in spite of the said orders, the 4th respondent is proceeding with manufacturing and marketing of Ductile Iron Pipes in violation of provisions of Bureau of Indian Standards Act, 1986 and the 2nd respondent Bureau of Indian Standards has also not taken any action against the 4th respondent. But still, the 1st respondent is purchasing the sub-standard Ductile Iron Pipes manufactured and marketed by 4th respondent for the public consumption.

5. Hence, the above Public Interest Litigation.

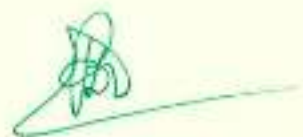
6. Heard Mr. Karma Thinlay Namgyal, learned Government Advocate on behalf of the 1st respondent.



7. Admittedly, the learned Senior Counsel Mr. Percy Kavina appearing for the petitioner fairly conceded that the petitioner has not made any complaint to the respondent Nos. 2 and 3 till date; nor made any representation to the respondent No. 1 in this regard. If that be the case, I am of the considered opinion that it may not be proper for this Court to entertain the above Public Interest Litigation at this stage, until the competent authority under the provisions of the Bureau of Indian Standards Act, 1986, Rules and Regulations made thereunder take appropriate decision as to whether the Ductile Iron Pipes alleged to have been manufactured and marketed by the 4th respondent devoid of standards prescribed under the provisions of the said Act, Rules and Regulations.

8. Notice to the contesting respondent Nos. 2, 3 and 4 is dispensed with, as I do not propose to go into the merits of the case; nor propose to render any adverse finding against the said respondents.


9. Hence, without going into other merits of the case, suffice it to permit the petitioner to approach the respondent Nos. 2 and 3 by appropriate complaint raising all the contentions that raised in the present writ petition or any other grounds as deemed fit and necessary under the circumstances of the case, invoking the statutory provisions under the Act, Rules and



Regulations and seek appropriate remedy before them, if they are so pleased. In the event of such complaint is made to the respondent Nos. 2 and 3 or any other competent authority prescribed under the Act, Rules and Regulations, such authority shall, after due notice to the 4th respondent in compliance with statutory provisions and principles of natural justice, hold an enquiry and take appropriate decision in the matter, independently, in accordance with law, not being influenced by the disposal of this writ petition, within 90 (ninety) days from the date of receipt of such complaint and communicate the same to 1st respondent herein. On receipt of such decision of respondent Nos. 2 and 3 or any other competent authority and the representation of the petitioner, the 1st respondent shall take appropriate decision in the matter within 60 (sixty) days from the date of receipt of such representation of the petitioner.

10. The respondent Nos. 1, 2 and 3 shall report the compliance of this order to the Court.

The writ petition is disposed of accordingly. No cost.


(P.D. Dinakaran, CJ)
18.03.2011

Index : Yes/No

Internet : Yes/No