



HIGH COURT OF SIKKIM
Record of Proceedings

Transfer Petition (C) No. 02/2019

**In the matter of
Title Appeal No. 12 of 2017**

- 1) Mahesh Chettri,
 - 2) Naresh Chettri,
Both S/o Late L.B. Chettri,
R/o Ipsing House,
Sichey Busty, Gangtok, East Sikkim
- ...Appellants

Versus

1. State of Sikkim,
Through the Chief Secretary,
Manan Kendra, Development Area,
Gangtok, East Sikkim.
 2. The PCE-cum-Secretary,
Building & House Department,
Government of Sikkim,
Nirman Bhawan, Gangtok,
East Sikkim.
 3. The Secretary (Ministry of Home Affairs),
Government of India,
North Block, Raisana Hill,
New Delhi.
- ...Respondents

Date: 23/03/2019

CORAM :

HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CJ.

...

District Judge, Special Division-I, Sikkim at Gangtok (i/c),
passed an order stating therein that the Counsel for the appellant
informed the Court that earlier the father of the District Judge, Shri
N.B. Khatiwada (Senior Advocate) had appeared on behalf of the
State-respondent in the capacity of Additional Advocate General,
Sikkim, in *Writ Petition (C) No. 64 of 2001, Shri Lal Bahadur Chettri v.*



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State of Sikkim, which had been filed by the original appellant (deceased) before the High Court in respect of the same subject matter involved in the appeal. The District Judge in his order observed that once the said fact came to his notice, it would not be appropriate for him to proceed with the matter. He, thereafter, referred the matter to the High Court. Copy of the said Order was sent by him along with the letter dated 21.12.2018. The Chief Justice passed an order on administrative side directing the same to be listed on judicial side as transfer petition.

(2) I have considered the ground mentioned in the order of District Judge. The Hon'ble Supreme Court in the matter of ***Supreme Court Advocates-On-Record Association and Another vs. Union of India : (2016)5 SCC 808 (per curiam)*** has held that a judge can recuse a matter, if a Judge has a financial interest in the outcome of a case. In such cases, he is automatically disqualified from hearing the case. In cases where the interest of the Judge is other than financial, then the disqualification is not automatic but an enquiry is required where the existence of such an interest disqualifies the Judge tested in the light of either on the principle of "real danger" or "reasonable apprehension".

(3) In the matter of ***Trishala vs. M.V. Sundar Raj and Another : (2010) 15 SCC 714***, the petitioner before the Hon'ble Supreme Court requested that the matter be remanded to the High Court and be heard by another Judge as the Judge who was dealing the case in the



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High Court earlier had appeared as a Standing Counsel for the Municipal Corporation. The Hon'ble Supreme Court held that it cannot be held that simply because the learned Judge whilst at the Bar was a Standing Counsel for the Municipal Corporation, he is precluded either in law or on propriety from hearing any case in which a Corporator is a party in his personal capacity.

(4) In the present case, this fact was brought before the learned District Judge that earlier his father, being the Additional Advocate General of the State, had appeared for the State in respect of the same subject matter. In my view, this cannot be and should not be ground for recusal from the case. The District Judge, at no point of time, was involved in any manner with the case. He himself was not appearing for any of the parties. It was his father who was appearing for the respondent, that too, for the State as State Counsel/Additional Advocate General. In fact, in many cases the Counsel for the State appear on behalf of the State. They do not even remember in which case they appeared for the State. The father of the District Judge appeared in his private capacity and the District Judge had nothing to do with the said case. In some cases it is found that father appears for one party and son appears for opposite party. They appear for the respective parties in their individual capacity. Nothing wrong in it.

(5) In my view, it is the duty of a Judge to hear every matter placed before him without fear or favour. A Judge can recuse when he or his family members' interest is involved in the case. He can also



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recuse when his close relative is a party in the /is. He can recuse from a case where one of the parties is known to him and is closely associated with him. He can also recuse when he had earlier as an Advocate appeared for one of the parties. A Judge can also recuse where he had earlier given legal opinion in the matter or has a financial interest in the litigation.

(6) In view of the above, the application sent by the learned District Judge, Special Division-I, Sikkim at Gangtok (i/c), is rejected.

(7) This Transfer Petition, accordingly, stands disposed of.

(8) Let a copy of this Order be sent to the concerned District Judge.

(9) Since notice was not issued to any of the parties, the Registry is directed to send a copy of this Order to the concerned parties also.

Chief Justice
23.03.2019

Index : Yes / ~~No~~
Internet : Yes / ~~No~~

jk/bp