

GAHC010027242021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/61/2021

STATE OF SIKKIM AND 7 ORS.
THROUGH THE CHIEF SECRETARY, TASHILING SECRETARIAT, GANGTOK,
EAST SIKKIM.

2: HOME DEPARTMENT

THROUGH THE SECRETARY
GOVT. OF SIKKIM
GANGTOK
EAST SIKKIM.

3: DEPARTMENT OF PERSONNEL

THROUGH THE SECRETARY
GOVT. OF SIKKIM
GANGTOK
EAST SIKKIM.

4: LAND REVENUE AND DISASTER MANAGEMENT DEPARTMENT

THROUGH THE SECRETARY
GOVT. OF SIKKIM
GANGTOK
EAST SIKKIM.

5: THE DISTRICT COLLECTOR

EAST DISTRICT
GANGTOK.

6: THE DISTRICT COLLECTOR

SOUTH DISTRICT
NAMCHI.

7: THE DISTRICT COLLECTOR

WEST DISTRICT
GYALSHING.

8: THE DISTRICT COLLECTOR

NORTH DISTRICT
MANGAN

VERSUS

YOGEN GHATANI AND 20 ORS.
S/O- AMRIT KUMAR, R/O- RHENOCK, EAST SIKKIM.

2:BIBEK TAMANG
S/O- PEMBA TAMANG
R/O- RHENOCK
EAST SIKKIM.

3:ANUPAMA SUBBA
D/O- ANTHONY SUBBA
R/O- PAKYONG
EAST SIKKIM

4:TAPAN RAI
S/O- BASANT RAI
R/O- DIESEL POWER HOUSE ROAD
GANGTOK
EAST SIKKIM.

5:BHAWESH GAZMER
S/O- PRAKASH SINGH GAZMER
R/O- TADONG
NEAR COLLEGE AREA
GANGTOK
EAST SIKKIM.

6:SUSHAN RAI
S/O- LATE BHARAT RAI
R/O- JORETHANG BAZAR
SOUTH SIKKIM.

7:ENISHA CHETTRI
D/O- BHAKTA CHETTRI
R/O- TATHANGCHEN
GANGTOK
SIKKIM.

8:ABINASH CHETTRI

S/O- BHANU BHAKTA CHETTRI
R/O- TATHANGCHEN
GANGTOK
EAST SIKKIM.

9:BISWAS CHETTRI
S/O- BHANU BHAKTA CHETTRI
R/O- TATHANGCHEN
GANGTOK
EAST SIKKIM.

10:SAMIR RAI
S/O- RAJ BAHADUR RAI
R/O- LOWER SICHEY
GANGTOK
SIKKIM.

11:NORGAIN LEPCHA
S/O- NAMGYAL LEPCHA
R/O- DIESEL POWER HOUSE ROAD
GANGTOK
EAST SIKKIM.

12:TEJASWI RAHAPAL
S/O- SANJAY SINGH RAHAPAL
R/O- DIESEL POWER HOUSE ROAD
GANGTOK
SIKKIM.

13:MEENAKSHI GAZMER
D/O- PRAKASH SINGH GAZMER
R/O- NEAR SIKKIM GOVERNMENT COLLEGE
TADONG
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EAST SIKKIM.

14:LALITA TAMANG
D/O- LATE NAR BAHADUR TAMANG
R/O- TATHANGCHEN
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EAST SIKKIM.

15:RUDRA TAMANG
S/O- LATE NAR BAHADUR TAMANG
R/O- TATHANGCHEN
GANGTOK
EAST SIKKIM.

16:YOGESH VERMA
S/O- LATE TEK CHAND VERMA
R/O- NATIONAL HIGHWAY
GANGTOK
EAST SIKKIM

17:HEM KUMAR PRADHAN
S/O- LATE SAN BAHADUR PRADHAN
R/O- CHUJACHEN
EAST SIKKIM.

18:MOHAN LALL RAI
S/O- RAJ LALL RAI
R/O- UPPER BURTUK
GANGTOK
EAST SIKKIM.

19:NAR BAHADUR GURUNG
S/O- PADAM BAHADUR GURUNG
R/O- DIESEL POWER HOSE ROAD
GANGTOK
EAST SIKKIM.

20:JOSEPH TAMANG
S/O- LATE BIRDHOJ TAMANG
R/O- DIESEL POWER HOUSE ROAD
GANGTOK
EAST SIKKIM.

21:NAMGYAL LEPCHA
S/O- WANGDEN LEPCHA
R/O- DIESEL POWER HOUSE ROAD
GANGTOK
EAST SIKKIM

Advocate for the Petitioner : GA, SIKKIM

Advocate for the Respondent : S JOSHI

Linked Case : I.A.(Civil)/324/2021

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GANGTOK
EAST SIKKIM.

Advocate for : GA
SIKKIM

Advocate for : S JOSHI appearing for YOGEN GHATANI AND 20 ORS.

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 15.12.2021

Heard Mr. D. Agrawal, learned Senior Advocate; Dr. D. T. Bhutia, learned Additional Advocate General, Sikkim, appearing for the writ appellants. Also heard Mr. K. N. Choudhury, learned Senior Advocate, appearing for the respondents.

Pursuant to our order dated 07.12.2021, the Principal Secretary, Home Department, Government of Sikkim, has filed an affidavit. The aforesaid order dated 07.12.2021 is reproduced below:

“Heard Mr. Sameer Abhayankar, learned counsel appearing for the appellants. Also heard Mr. K. N. Choudhury, learned Senior Counsel appearing for the respondents.

During the course of argument it transpired that the Rules of Business framed under Clause 3 of Article 166 of the Constitution of India needs to be seen.

Let a copy of the same be placed before this court.

In addition to the above, let an affidavit be filed by a Secretary-level officer of the Government of Sikkim brining on record whether the

Office Memorandum dated 22.11.1995 was passed by the Governor of Sikkim in exercise of his powers under Article 371F(g) of the Constitution of India.

*List the matter again on **15.12.2021.***

Although a copy of the entire Rules relating to allocation of business, namely, "Government of Sikkim (Allocation of Business) Rules, 1975" has been enclosed with the affidavit filed by the Home Secretary, Government of Sikkim, the replay seems to be evasive inasmuch as it does not explain in clear language whether the Memorandum dated 22.11.1995 was passed by the Governor of Sikkim in exercise of his powers under Article 371F(g) of the Constitution of India. What have been stated in paragraph 5 and 6 of the affidavit read as under:

"5. I say that the Notification dated 22.11.1995 has been issued with the objective of identifying the Sikkimese Citizens and non-Sikkimese Citizens (as referred to in the proviso to Rule 4(4) of the Sikkim Government Establishment Rules, 1974) through the means of issuance of a Certificate of Identification. I say that the said Notification and the subsequent Notifications/Memoranda dated 27.09.1996, 25.1.2006 and 26.10.2010 were necessitated in order to make the said proviso to Rule 4(4) of the Sikkim Government Establishment Rules, 1974 workable.

6. I say that the said Rule is peculiar to the State of Sikkim, and enjoys the Constitutional protection of Article 371F of the Constitution of India. I say therefore that the exercise of power by His Excellency the Governor of Sikkim while issuing the Notification dated 22.11.1995 is traceable to the powers conferred upon the Governor of Sikkim vide Article 37F(g) of the

Constitution of India.”

We must record that our query remains unanswered and there is no clear reply as to whether the Memorandum dated 22.11.1995 was passed by the Governor of Sikkim in exercise of his powers under Article 371F(g) of the Constitution of India.

This shall be subject to the further orders to be passed in this appeal.

List again on **19.01.2022**.

JUDGE

CHIEF JUSTICE

Comparing Assistant