

GAHC010027242021



2026:GAU-AS:5287-DB

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

**Writ Appeal No.61 of 2021**

1. State of Sikkim, through the Chief Secretary, Tashiling Secretariat, Gangtok, East Sikkim.
2. Home Department, through the Secretary, Government of Sikkim, Gangtok, East Sikkim.
3. Department of Personnel, through the Secretary, Government of Sikkim, Gangtok, East Sikkim.
4. Land Revenue & Disaster Management Department, through the Secretary, Government 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.

**.....Appellants**

***-Versus-***

1. Mr. Yogen Ghatani,  
Son of Mr. Amrit Kumar,  
Resident of Rhenock, East Sikkim.
2. Mr. Bibek Tamang,  
Son of Mr. Pemba Tamang,  
Resident of Rhenock, East Sikkim.
3. Ms. Anupama Subba,  
Daughter of Mr. Anthony Subba,  
Resident of Pakyong, East Sikkim.
4. Mr. Tapan Rai,  
Son of Mr. Basant Rai,  
Resident of Diesel Power House Road,  
Gangtok, East Sikkim.
5. Mr. Bhawesh Gazmer,  
Son of Mr. Prakash Singh Gazmer  
Resident of Tadong, Near College Area, Gangtok,  
East Sikkim.
6. Mr. Sushan Rai,  
Son of Late Bharat Rai,  
Resident of Jorethang Bazar,  
South Sikkim.
7. Ms. Enisha Chettri,  
Daughter of Mr. Bhakta Chettri,  
Resident of Tathangchen,  
Gangtok, East Sikkim.
8. Mr. Abinash Chettri,  
Son of Mr. Bhanu Bhakta Chettri,  
Resident of Tathangchen, Gangtok,  
East Sikkim.
9. Mr. Biswas Chettri,  
Son of Mr. Bhanu Bhakta Chettri  
Resident of Tathangchen, Gangtok,  
East Sikkim.
10. Mr. Samir Rai,  
Son of Mr. Raj Bahadur Rai,

Resident of Lower Sichey,  
Gangtok, East Sikkim.

11. Mr. Norgain Lepcha,  
Son of Mr. Namgyal Lepcha,  
Resident of Diesel Power House Road,  
Gangtok, East Sikkim.

12. Mr. Tejaswi Rahapal,  
Son of Mr. Sanjay Singh Rahapal,  
Resident of Diesel Power House Road, Gangtok,  
East Sikkim.

13. Ms. Meenakshi Gazmer,  
Daughter of Prakash Singh Gazmer,  
Resident of Near Sikkim Government College,  
Tadong, Gangtok, East Sikkim.

14. Ms. Lalita Tamang,  
Daughter of Late Nar Bahadur Tamang,  
Resident of Tathangchen, Gangtok,  
East Sikkim.

15. Mr. Rudra Tamang,  
Son of Late Nar Bahadur Tamang,  
Resident of Tathangchen, Gangtok,  
East Sikkim.

16. Dr. Yogesh Verma,  
Son of Late Tek Chand Verma,  
Resident of National Highway, Gangtok, East  
Sikkim.

17. Mr. Hem Kumar Pradhan,  
Son of Late San Bahadur Pradhan,  
Resident of Chujachen, East Sikkim.

18. Mr. Mohan Lall Rai,  
Son of Mr. Raj Lall Rai,  
Resident of Upper Burtuk, Gangtok,  
East Sikkim.

19. Mr. Nar Bahadur Gurung,

Son of Padam Bahadur Gurung,  
Resident of Diesel Power Hose Road,  
Gangtok, East Sikkim.

20. Mr. Joseph Tamang,  
Son of Late Birdhoj Tamang,  
Resident of Diesel Power House Road,  
Gangtok, East Sikkim.

21. Mr. Namgyal Lepcha,  
Son of Mr. Wangden Lepcha,  
Resident of Diesel Power House Road,  
Gangtok, East Sikkim.

.....Respondents

**- BEFORE -**  
**HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR**  
**HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY**

For the Appellant(s) : Mr. S.S. Dey, Senior Advocate, assisted by  
Mr. A. Bhalla, Additional Advocate General,  
Sikkim.  
: Mr. T.D. Bhutia, Government Advocate, Sikkim  
and Mr. D.J. Kapil, Advocate.

For the Respondent(s) : Mr. K.N. Choudhury, Senior Advocate, assisted  
by Ms. S. Chakraborty and Ms. P. Sarma,  
Advocates.

Dates of hearing : 10.02.2026, 19.02.2026,  
24.03.2026, 07.04.2026 and 08.04.2026.

Date of judgment : 08.04.2026

## **JUDGMENT & ORDER**

**(Ashutosh Kumar, C.J.)**

This appeal is directed against the judgment dated 20.02.2020 passed by a learned Single Judge of High Court of Sikkim in WP(C) No.66/2016, whereby (i) the insertion in the notification of 1995 restricting the Certificate of Identification (COI) "*for the purpose of employment only*"; (ii) the further insertion in the notification of 1996 adding the words "*and for no other purpose*" and (iii) the communication dated 02.06.2006 excluding the third generation (grandchildren) of certain categories of beneficiaries were set aside and quashed.

**2.** It may be noted here that this appeal was transferred to this Court by the order of the Apex Court and thus, has been placed before us for adjudication.

**3.** The State of Sikkim contends that the learned Single Judge failed to appreciate the historical and constitutional context of Sikkim, particularly Article 371-F of the Constitution and the continuity of pre-merger legal structures.

**4.** The controversy cannot be understood in isolation of Sikkim's unique constitutional evolution.

**5.** By the Constitution (Thirty-Sixth) Amendment Act, 1975, Sikkim became a State in the Indian Union on 24.04.1975 (appointed date). Article 371-F was inserted in the Constitution of India as a special provision

for the State of Sikkim. It would only be appropriate for the sake of completeness to extract the relevant parts of Article 371-F of the Constitution of India, relevant for the present discussion, hereinbelow:

**“371 F. Special provisions with respect to the State of Sikkim-**

*Notwithstanding anything in this Constitution,-*

*(a) .....*

*(b) .....*

*(i) .....*

*(ii) .....*

*(iii) .....*

*(c) .....*

*(d) .....*

*e) .....*

*(f) .....*

*(g) the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim and in the discharge of his special responsibility under this clause, the Governor of Sikkim shall, subject to such directions as the President may, from time to time, deem fit to issue, act in his direction;*

*(h) .....*

*(i) .....*

*(j) .....*

*(k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in*

*force therein until amended or repealed by a competent Legislature or other competent authority;*

*(l) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law;*

*(m) neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or executed before the appointed day and to which the Government of India or any of its predecessor Governments was a party, but nothing in this clause shall be construed to derogate from the provisions of article 143;*

*(n) the president may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of the notification;*

*(o) if any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may, by order, do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing the difficulty: Provided that no such order shall be made after the expiry of two years from the appointed day;*

*(p) all things done and all actions taken in or in relation to the State of Sikkim or the territories comprised therein during the period commencing on the appointed day and ending immediately before the date on which the Constitution (Thirty-sixth Amendment) Act, 1975, received the assent of the President shall, in so far as they are in conformity with the provisions of this Constitution as amended by the Constitution (Thirty-sixth Amendment) Act, 1975, be deemed for all purposes to have been validly done or taken under this Constitution as so amended.”*

**6.** Prior to the merger of Sikkim with India on 26.04.1975, the legal status of persons in Sikkim was governed by the Sikkim Subjects Regulation, 1961 (hereinafter to be referred as '1961 Regulation'). Under the said regulation, subjecthood could be acquired through birth, descent, domicile, or naturalisation, including under Regulation 8(iii) (a), which recognised long serving government employees.

In exercise of the powers conferred by Section 13 of the aforementioned 1961 Regulation, the Government of His Highness, the Maharaja of Sikkim, was pleased to make and promulgate Sikkim Subjects Rules of 1961 (hereinafter to be referred as 'Rules of 1961'). This Rule further provided that any application for certificate of naturalisation under Section 8 of the Regulation shall be made in a particular form before the Chief Executive Officer, who, on being satisfied that the applicant fulfils the conditions for being registered or naturalised, as the case may be, under the Regulation and that he is fit and proper person to be so registered or naturalised, accept his application and issue the necessary certificate for the purpose.

Rule 10 of the Rules of 1961 further provides that the Chief Executive Officer would cause to be maintained a register of Sikkim Subjects which shall be kept in the custody of such officer of the Government as the Chief Executive Officer may direct.

**7.** Prior to the merger, the Sikkim Government Establishment Rules, 1974 (hereinafter to be referred as '1974 Rules') was also promulgated by the Monarch (Chogyal) which provided preference to Sikkim Subjects in public employment permitting appointment of non-Sikkimese only in the

absence of suitable candidates.

**8.** Sub-section 4 of Section 4 of the afore-noted 1974 Rules provided as follows:

*“(4) Appointment:- (A) Appointment to service under the Government shall be by one or both the method indicated below:-*

- (a) Direct recruitment;*
- (b) Promotion from one grade to another;*

*(B) Direct recruitment shall include appointment on contract and appointment on deputation:*

*Provided these two types of appointment shall be made having due regard to the exact nature of specific duties and responsibilities and the qualification required for the post, and further provided that (i) Non-Sikkimese nationals may be appointed only when suitably qualified and experienced Sikkimese nationals are not available, and (ii) replacement of such appointees by suitable Sikkimese candidates may be made as and when available.*

*Mutually agreed terms shall apply to all appointments on contract. For appointments on deputation, formal agreements as to the terms shall be between the Government of Sikkim and the parent organisation of the officer, through the Government of India and not directly with the officer.”*

**9.** It can clearly be noted that under these Rules, preference was to be given to Sikkim subjects for recruitment in government service and only in the absence of qualified Sikkimese personnel, appointments were to be offered to non-Sikkimese.

**10.** Post merger, the Sikkim Government Establishment Rules, 1974 came to be adopted by the State of Sikkim under Article 309 of the Constitution of India.

**11.** The constitutional validity of the afore-noted Rules of 1974 was

upheld by the Hon'ble Supreme Court in the case of ***State of Sikkim vs. Surendra Prasad Sharma and Ors. :: (1994) 5 SCC 282.***

**12.** A brief reference to the facts of the afore-noted case would be necessary to understand the administrative structure of the State of Sikkim within the Union of India.

**13.** In that case, the true scope and meaning of Rule 4(4) of the Sikkim Government Establishment Rules, 1974, extracted above, which were in force before Sikkim became a part of the territory of India and stood adopted by the State of Sikkim under Article 309 of the Constitution, was discussed.

**14.** After the merger of Sikkim as the 22<sup>nd</sup> State of the Union of India, the Directorate of Survey and Settlement of the Government of Sikkim proceeded to create and advertise certain posts, inviting applications for filling up those temporary posts. The respondents in ***Surendra Prasad Sharma*** (supra), applied for the posts and were appointed in different capacities in 1976. As and when the survey work was completed, the surplus employees were relieved of their jobs in 1980, 1981 and 1982. In 1982, some of the surplus employees, who were non-locals, had filed a writ petition in the High Court of Sikkim challenging the Government's decision terminating their services.

A learned Single Judge of the High Court allowed the writ petition and quashed the termination orders, against which judgment, the State went in appeal before the Supreme Court.

The grievance of the employees was that in effecting

termination of the services of the surplus employees, they were classified as 'locals' and 'non-locals', and while the employees belonging to the former class of 'locals' were retained, the employees belonging to the latter class of 'non-locals' were relieved, notwithstanding their *inter se* seniority.

On behalf of the State of Sikkim, such termination order was supported under the proviso to Rule 4(4) read with clauses (k) and (l) of Article 371 F of the Constitution. The action was also sought to be supported on the ground that in the advertisement issued for the posts in question, it was specifically stated that preference would be given to local candidates, whose names/parents' names were included in the relevant Sikkim Government Register.

The State contended that under the extant laws, candidates from outside could not be directly recruited so long as 'locals' were available for such work. It was also argued that since they were temporary hands, their services could be terminated on a month's notice.

The issue raised, therefore, required consideration of the questions as to whether the termination of employment on the basis of aforesaid classifications could be justified under the extant laws and if so, whether the relevant laws are constitutionally valid.

**15.** The learned Single Judge of Sikkim High Court was of the view that the provision contained in Rule 4(4) of the Sikkim Government Establishment Rules, 1974 had become unworkable as a result of "Sikkimese nationality" having ceased to exist as a legally cognizable

concept with the incorporation of Sikkim as a component State in the Union of India in 1975.

It was also held by him that even assuming that the construction of the expression "Sikkimese nationals" in the relevant Rules to mean permanent residents of Sikkim which would have made the Rules workable in the post-1975 context, such a construction was not possible or legally permissible, as one could be a national of one country without being a resident thereof and with his domicile in another country. Even if such a construction was possible or permissible, the relevant rules so construed, according to the learned Single Judge, would be violative of Article 16 of the Constitution as being discriminatory on the ground of residence.

**16.** However, the Supreme Court in **Surendra Prasad Sharma** (supra), repelling the arguments of the Sikkim High Court, held as follows: -

*"22. Article 371-F, is as stated earlier, a special constitutional provision with respect to the State of Sikkim. The reason why it begins with a non obstante clause obviously is that the matters referred to in the various clauses immediately following required a protective cover so that such matters are not struck down as unconstitutional because they do not satisfy the constitutional requirement. Unless such immunity was granted 'the laws in force' would have had to meet the test of Article 13 of the Constitution. This being the objective, existing laws or laws in force came to be protected by clause (k) added to Article 371-F. The said laws in force in the State of Sikkim were, therefore, protected, until amended or repealed, to ensure smooth transition from the Chogyal's rule to the democratic rule under the Constitution. Inherent in clause (l) is the assumption that many of such existing laws may be inconsistent with the Constitution and, therefore, the President came to be conferred with a special power to make adaptations and modifications with a view to making the said rule consistent with the Constitution. Of course this power had to be exercised within two years from the appointed day. If any adaptation or modification is made in the law in*

force prevailing prior to the appointed day, the law would apply subject to such adaptation and modification. It is thus obvious that the adaptation and modification made by the President in exercise of this special power does not have the effect of the law ceasing to be a law in force within the meaning of clause (k) of Article 371-F. Therefore, on the plain language of the said provision it is difficult to hold that the effect of adaptation or modification is to take the law out of the purview of 'laws in force'.

23. The next question is whether the insertion of the introductory clause purporting to convey that the said rules are made under [Article 309](#) of the Constitution with effect from 26-4-1975 amounts to substitution of the Establishment Rules of 1974 to deny them the immunity conferred by clause (k) of [Article 371-F](#)? We have extracted the introductory part earlier which shows that the Establishment Rules were merely 'adopted' with modification with effect from 26-4-1975. Rule 4(4) remains as it was and the Rules continue to be effective from 1-4-1974. As held by this Court in the Mulki Rules case the question to ask is: Has Parliament repealed or amended the said Rules which were continued in force by virtue of the Constitution, [Article 35\(b\)](#) in that case and [Article 371-F\(k\)](#) in the present case. Effect must be given to the intendment of the said provision specially introduced in the Constitution to comply with the understanding on which Sikkim had agreed to merge with India. And since all laws in force in the territory of erstwhile Sikkim immediately before the appointed day could not be changed overnight, those existing laws had to be continued, more so because transition had to be smooth and gradual so that it does not give a sudden and severe jolt to the establishment. Besides, provision as to residential requirement could always be made by virtue of [Article 16\(3\)](#) of the Constitution. Therefore, if a provision in the Establishment Rules appears to offend [Article 16\(2\)](#), since such a provision is permissible by virtue of [Article 16\(3\)](#) and Parliament permits its continuance by a special provision, [Article 371-F\(k\)](#), the said requirement giving preference to 'locals' cannot be struck down as unconstitutional and any action based on the said provision would not be inconsistent with Part III of the Constitution. That being so we think that the line of reasoning adopted by the learned Judge in the High Court is not sustainable.

24. For the foregoing reasons we are of opinion that the view taken by the High Court is unsustainable. The appeals, therefore, succeed, the judgment and order of the High Court are set aside and the writ petitions filed in the High Court must stand dismissed. However, in the facts and circumstances of the case, we make no order as to costs throughout.”

*(emphasis provided)*

**17.** It would be relevant here, now, to state that vide Extraordinary Gazette No.41, dated 16.05.1975 of the Home Department, Government of India, "The Adaptation of Sikkim Laws (Number I) Order, 1975" was published for general information, whereby the 1961 Regulation stood repealed from the appointed day. The Home Department, Government of Sikkim vide Notification No.995/H/75, dated 21.06.1975 republished the notifications of the Government of India, Ministry of Home Affairs, bearing various numbers, dated 16.05.1975, for general information. It was notified therein *inter alia* that the Citizenship Act, 1955 was extended and enforced in the State of Sikkim w.e.f. 16.05.1975.

"The Sikkim (Citizenship) Order, 1975" of 16.05.1975 came to be issued declaring that every person who immediately before 26.04.1975 (appointed day) was a Sikkim subject under the 1961 Regulation, was deemed to have become a citizen of India on that day.

**18.** On 25.09.1976, a memorandum was issued from the office of the Secretary Establishment Department, Government of Sikkim requiring persons seeking employment to inform whether their parent's names had been recorded in the relevant Government Register on or before 15.05.1975.

The memorandum, referred to above, is being extracted hereinbelow:-

*"OFFICE OF THE SECRETARY  
ESTABLISHMENT DEPARTMENT  
GOVERNMENT OF SIKKIM*

*Memorandum No. 5(92) 229/ Gen./Est.*

*Dated : Gangtok, the September 25<sup>th</sup> 1976*

*In order to ascertain the residential qualification of candidates, who claim themselves to be locals at the time of seeking employment, it has been decided that the candidates should be asked to mention whether their parent's name have been recorded on or before 15.05.1975 in the relevant Government register.*

*Sd/-  
[T/ Chhopel]  
SECRETARY TO THE GOVERNMENT OF SIKKIM  
Establishment Department”*

**19.** In continuation of the afore-noted memorandum, another notification dated 21.08.1980 was issued, informing all the Heads of the Departments that domiciles/residential certificate issued by sources other than the District Collector would not be accepted as valid.

**20.** The District Collectors, vide Notification dated 09.04.1981 issued by the Establishment Department, were authorised to issue certificates to persons in four categories to enable them to apply for employment in the State.

The notification dated 09.04.1981, referred to above, is being extracted hereinbelow:-

*“PART III  
Rules, Orders, Press Notes etc.*

*GOVERNMENT OF SIKKIM  
ESTABLISHMENT DEPARTMENT*

*No.5(92)5 (GEN) /EST.*

*Dated Gangtok, the 9<sup>th</sup> April 1981*

*MEMORANDUM*

*In modification of this Department Memorandum No. 5(92) 229/Gen/Est. dt. 25.9.76 and Notification No.285/Gen/Est. dt. 28.1.1980, the Governor has been pleased to authorize the District Collectors within their respective Districts to issue Certificates to persons identifying them in the following groups to enable them to apply for employment in the State.*

- 1. A person whose name is found recorded in the Old Sikkim Subject Register prior to 1975.*
- 2. A person whose name is not found registered in the Old Sikkim Subject Register but he/she has established beyond doubt that the name of his/her father/husband/ parental grand father/brother from the same father has been recorded in the Old Sikkim Subject Register.*
- 3. The person who has agricultural land in the rural areas and has been ordinarily residing in the State of Sikkim.*
- 4. A person whose father/husband has been in the service of the State Government on or before 31<sup>st</sup> December 1969.”*

**21.** At this stage, it would be appropriate to state that persons falling in category 4, namely, a person whose father/husband had been in the service of the State Government or on before 31<sup>st</sup> December, 1969, perhaps understood it as being placed at par with the rest of the other categories, namely, 1, 2 and 3; meaning thereby that they, on the basis of such Certificate of Identification, perhaps, had been included in the category of Sikkimese Subjects. This idea had gained ground because of the fact that under the 1961 Regulation, the government servants were placed on a higher pedestal than even those born in the territory of Sikkim. For the non-government servants, residence in Sikkim for a period of fifteen years preceding the 1961 Regulation was a must; whereas for a government servant, the eligibility criteria was of being in government

service for a period of ten years even after the commencement of 1961 Regulation.

It was also the case of the respondents before the learned Single Judge that at the time of promulgation of 1961 Regulation, for the paucity of sufficient number of educated Sikkimese, non-Sikkimese were offered government service and they were under the legitimate expectation of becoming Sikkimese Subjects on completion of ten years of service notwithstanding the fact that the Memorandum of 1981, referred to above, was issued for the purposes of employment only.

But, according to the contention raised by the respondents before the learned Single Judge, such Certificate of Identification was being accepted and relied upon for other purposes like sale and purchase of land in Sikkim and also for obtaining relevant caste, tribe and class certificates. The persons in categories 1 to 3 were treated as Sikkimese and so was the expectation of persons falling in category 4, i.e. persons in government service.

**22.** Sometimes in the year 1988, an application was moved in the Lok Sabha for amendment to the Sikkim (Citizenship) Order 1975 and, ultimately, vide amendment order of 1989, a provision was included in paragraph 2 of the Sikkim (Citizenship) Order, 1975 declaring that any person whose name was eligible to be entered in the register maintained under the Regulation, but was not so entered because of any genuine omission, would also be deemed to have become citizen of India on that day, i.e. 26.04.1975, if so determined by the Central Government.

**23.** Pursuant to the afore-noted amendment, a Committee was

constituted on 03.04.1989 by the Central Government for the afore-noted purpose, which was authorised to invite applications as per the provision of Sikkim (Citizenship) Amendment Order, 1989, to scrutinise the said applications and conduct such inquiry, as necessary, either by themselves or through any officer or agency of the Central Government or the State Government, and to determine the eligibility of the applicants as per the guidelines. The guidelines for the Committee included consideration of the applications of persons holding regular government job before 26.04.1975, provided that the appointment had not been made under the exception clause pertaining to non-subjects; and his natural descendants.

**24.** It would be profitable to note that the exercise of scrutinising such applications were carried out on three occasions, i.e. on 07.08.1990, 08.04.1991 and 10.01.1994 and a total of 40,083 persons were included in the list. The respondents are the ones who were left out and their claims for inclusion, according to them, is still pending before the Committee.

It may be noted here that, on scrutiny, if their names stand included in the relevant Subject Register, it would obviate any need to question the limiting insertions in the latter notifications.

**25.** After passage of 14 years of issuance of the Notification dated 09.04.1981, which was in continuation of the earlier circulars of 1976 and 1980, the Government of Sikkim, in its Home Department, came out with another notification on 22.11.1995 in supersession of all previous memoranda of 1976, 1980, 1981 and 1987, authorising the District Collectors/Sub-Divisional Officers and Revenue Officers to issue

Certificate of Identification to the persons falling in different categories within their respective jurisdiction, on the recommendation of the Gram Panchayat, with the condition that Certificate of Identification shall be issued to the applicants by the issuing authority only on being duly satisfied with such recommendation.

The notification dated 22.11.1995 is being extracted hereinbelow:

*“GOVERNMENT OF SIKKIM  
HOME DEPARTMENT*

*No.66/Home/95*

*Dated: 22<sup>nd</sup> November, 1995*

*NOTIFICATION*

*In supersession of the Memorandum No.5(92) 229/GEN/EST, dated 25<sup>th</sup> September, 1976, Notification No.285/GEN/EST, dated 28<sup>th</sup> January, 1980, Memorandum No.5(92)5/GEN/EST, dated 9<sup>th</sup> April, 1981 and Circular No.339/HS/87, dated 17<sup>th</sup> March, 1987, the State Government is hereby pleased to authorise the District Collectors, Sub-Divisional Officers and Revenue Officers within their respective jurisdiction to issue Certificate of Identification to the persons falling in the different categories as indicated below on the recommendations of the Gram Panchayat and being duly satisfied with such recommendation:-*

- 1. A person whose name is found recorded in the Old Sikkim Subject Register or*
- 2. A person whose name is not found registered in the Old Sikkim Subject Register but he/she has established beyond doubt that the name of his/her father/husband/ paternal grandfather/brother from the same father has been recorded in the Old Sikkim Subject Register or*
- 3. A person who has or had agricultural land in rural areas and has been ordinarily residing in the State of Sikkim or*
- 4. A person who is holder of Indian Citizenship Certificate issued by the District Collector, Government of Sikkim under the Sikkim*

*(Citizenship) Order, 1975 as amended vide the Sikkim (Citizenship) Amendment order, 1989, or*

5. *A person whose father/husband has/had been in Sikkim Government Service on or before 31.12.1969. Certificate or Identification obtained by such persons shall be for the purpose of employment only.*

*The Form prescribed for submission by Gram Panchayats to District Collectors/Sub-Divisional Officers/Revenue Officers for issue of Certificate of Identification is at Annexure-1. Certificate of Identification henceforth shall be issued on the basis of verification report and recommendations of Gram Panchayats. Gram Panchayats have to be very careful in respect of verification and recommending such cases. In case Certificate of Identification is issued to wrong person on the recommendations of Gram Panchayat, such Gram Panchayat shall be liable for punishment under appropriate Acts or Rules.*

*For issue of Certificate of Identification to the applicants of notified bazar areas necessary verification shall be done by the concerned Police Station and Sub-Divisional Officers on the basis of guidelines indicated above.*

*Certificate of Identification shall be issued to the applicant by the issuing authorities.*

*By order and in the name of the Governor.”*

*(emphasis provided)*

**26.** As could be noticed that in category 5, those persons were included whose father/husband has/had been in Sikkim Government Service on or before 31.12.1969. For them, it was asserted by the respondents and questioned by the appellant/State, the COI shall only be for the purposes of employment. It was argued therefore that for persons falling in category 5 of the Notification dated 22.11.1995, the COI issued in their favour would have a restricted utility for the purpose of employment only.

It was argued that there was no such restriction for people falling

in other categories, who could have used the COI issued in their favour for other purposes apart from employment.

**27.** On 27.09.1996, another notification was brought out further inserting a restriction that for people the falling in category 5, the COI would only be for the purposes of employment and for no other purpose.

For continuity, the afore-noted Notification dated 27.09.1996 is also being extracted hereinbelow:

*“GOVERNMENT OF SIKKIM  
HOME DEPARTMENT*

*No.57Home/96*

*Dated 27<sup>th</sup> September, 1996*

*NOTIFICATION*

*In partial modification of Notification No.66/ Home/95 dated 22<sup>nd</sup> November, 1995, the State Government hereby makes the following amendments with immediate effect:-*

- 1. In the said Notification for the words, “Sub-Divisional Officers and Revenue Officers” wherever they occur, the words “Additional District Collectors” shall be substituted.*
- 2. In paragraph 1, after the words “with such recommendations” the words “after proper police verification” shall be added.*
- 3. For item 5, the following shall be substituted, namely:-  
'5. A person whose father/husband has/had been in Sikkim Government Service on or before 31.12.1969 and permanently settled in Sikima for his retirement. Certificate of Identification obtained by such persons shall be for the purpose of employment only and for no other purpose.'*

*By order and in the name of the Governor.”*

*(emphasis provided)*

**28.** Reading this as absolutely exclusionary, the learned Single Judge

found that such insertions for a particular class of applicants seeking COI was not only arbitrary, but discriminatory and violative of Articles 14, 16 and 21 of the Constitution of India.

**29.** The difficulties for persons of such category/ respondents did not end here. On 25.01.2006, a notification was issued under the signature of the Chief Secretary, Government of Sikkim, which was in continuation and in partial modification of the Notification dated 22.11.1995, making the COI for the respondents to be used only for the limited purpose of employment, directing the District Officers authorised to issue COI to issue such certificates only to direct descendants of SSC/COI holders appearing in the updated list. All other requests for issuance of COI were directed to be forwarded to the Head Office for consultation after completing the field verification as usual.

A clarificatory note was also issued on 02.06.2006 to the effect that the third generation/ grandchildren would not be entitled for issuance of COI under the notifications of 1995 and 1996.

Both the aforementioned notification and the clarification are also being extracted hereinbelow:-

*“GOVERNMENT OF SIKKIM  
HOME DEPARTMENT  
GANGTOK*

*No.04 Home/2006*

*Dated 25/01/2006*

*NOTIFICATION*

*In continuation and in partial modification of Notification No.66/Home/95 dated 22<sup>nd</sup> November, 1995, the State Government is hereby pleased to notify following further procedures relating to issue of*

*Certificate of Identification (COI).*

1. *The District Officers authorized to issue COI shall issue COI only to direct descendents of SSC/COI holders appearing in the present updated list.*

2. *All other request for issue of COI shall be forwarded to the Head Office for consideration after completing filed verification as usual.*

3. *A Committee consisting of the following shall consider such application and accord approval for ward of COI or otherwise. The Member Secretary shall communicate the cases approved by the Committee to the authorized District Officers for issue of COI.*

(i) *Secretary, Home*

(ii) *Secretary, DOPART*

(iii) *Secretary, Law*

(iv) *Secretary, UD & HD*

(v) *Secretary, LR & DM- Member Secretary*

4. *The District Officers shall prepare a revenue blockwise list of persons to whom the COI has been issued and submit a copy to the Head Office on quarterly basis for compilation.*

5. *The District Offices shall prepare blockwise list of such certificate holders annually and display in public notice boards for public viewing and also send a copy to the concerned Gram Panchayat for its placement in their respective Gram Sabha.*

6. *In case of death of any of the holder of COI, the concerned Gram Panchayat shall report such death within the year under review, to the District Collector with a copy of death certificate for updation of the record.*

7. *The District Offices shall make entry of such reports in the concerned revenue block list for annual updation and forward a copy to the Head Office for concurrent updation.*

8. *In order to facilitate the issue of COI to the descendents of such deceased person, during updation, the name of such deceased persons shall not be deleted in the register. However, his death shall be recorded in the remarks column so that the certificate in the name of such persons stands cancelled.*

*BY ORDER AND IN THE NAME OF THE GOVERNOR.”*

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“HOME DEPARTMENT  
GOVERNMENT OF SIKKIM

No.GOS/HOME-ii/94/14 (Part)/2687 Dated: 02/06/2006

To

*The District Collector  
East District  
Gangtok*

Sir,

*Kindly refer to your office letter No.861/DCE dated 10.05.2006 seeking clarification as to whether the Certificate of Identification can be issued to the grand children of the persons who were issued with the Certificate of Identification being in regular Government service prior to 31.12.1969.*

*I am directed to convey that the third generation not covered for issue of COI under Notification No.66/ Home/1995 dated 22.11.1995 and No.57/Home/1996 dated 27/09/1996. Therefore, the present practice may continue.”*

**30.** With utmost respect at our command, we must say that the learned Single Judge looked at and traversed through the different memoranda/ notifications with a different approach, completely forgetting the provisions contained in Article 371-F and the relevant provisions of the Sikkim Government Establishment Rules, 1974, which was adopted by the State of Sikkim under Article 309 of the Constitution of India and whose validity was upheld by the Supreme Court in **Surendra Prasad Sharma** (supra).

**31.** The learned Single Judge taking into account the judgments of

the Supreme Court in - (i) ***E.P. Royappa vs. State of Tamil Nadu & Anr. :: (1974) 4 SCC 3***; (ii) ***Indira Nehru Gandhi vs. Shri Raj Narain & Anr. :: (1975) Suppl. SCC 1***; (iii) ***Maneka Gandhi vs. Union of India, :: (1978) 1 SCC 248***; (iv) ***Ramana Dayaram Shetty vs. The International Airport Authority of India & Ors. :: (1979) 3 SCC 489***; (v) ***Ajay Hasia vs. Khalid Mujib Sehravardi & Ors. :: (1981) 1 SCC 722***; (vi) ***Kailash Chand Sharma vs. State of Rajasthan & Ors. :: (2002) 6 SCC 562***; (vii) ***Amita vs. Union of India & Anr. :: (2005) 13 SCC 721***; (viii) ***Manuelsons Hotels (P) Ltd. Vs. State of Kerala & Ors. :: (2016) 6 SCC 766***, wherein the Hon'ble Supreme Court had held that a policy decision should be free from the ills of arbitrariness and conform to the well settled norms: both positive and negative under Articles 14 and 16 read with Article 15 of the Constitution of India, which forms part of the constitutional code of morality; there is obligation of the State to take necessary steps so that every individual is given equal respect and concern to which he is entitled to as a human being eschewing any irrationality in the classification based on undisclosed or unknown reasons for subjecting individual to hostile and indiscriminatory policy etc., held that the insertions in the Notifications of 1995 and 1996 thereby limiting the utility of COI for a particular class of persons was without any rationale and quashed such insertions in the concerned notifications.

The learned Single Judge concluded as follows:

*“40. In conclusion, it is it is observed and ordered as follows;*

*(i) The insertion of the sentence “Certificate of Identification obtained by such persons shall be for the purpose of employment only” appearing in Notification No.66/Home/95, dated 22.11.1995, and insertion of the sentence “Certificate of Identification obtained by such persons shall be for*

*the purpose of employment only and for no other purpose” appearing in Notification No.57/Home/96, dated 27.09.1996, which substituted Item No.5 of the Notification No.66/Home/95, dated 22.11.1995, being irrational is violative of Article 14 of the Constitution of India and deserve to be and are hereby quashed.*

(ii) (a) *Letter bearing No.GOS/Home-II/94/ 14(Part)/2687, dated 02.06.2006, issued by the Respondent No.2, to the effect that, Item No.5 of Notification No.66/Home/95, dated 22.11.1995 does not entitle the third generation, i.e., the children of the persons who were issued Certificate of Identification on the basis of employment of their father in the Government of Sikkim before 31.12.1969 to obtain COIs, is unconstitutional, abridging the fundamental rights of the Petitioners guaranteed under Articles 14 and 21 of the Constitution of India and is accordingly quashed.*

*(b) The State-Respondents, their agents and servants are prohibited from giving effect to letter bearing No. GOS/Home-II/94/ 14(Part)/ 2687, dated 02.06.2006.*

(iii) *Insertion of Item No.4A to Notification No.66/Home/95, dated 22.11.1995, below Item No. 4 and above Item No.5 by Notification No.119/Home/ 2010, dated 26.10.2010 which reads;*

*‘4A. A person whose father/husband is/was eligible for grant of the Certificate of Identification under any of the categories listed under items 1 to 4 above, or’*

*is ultra vires Article 14 of the Constitution of India to the extent that it excludes Item No.5 from the same benefits as extended to categories in Item Nos.1 to 4 of the Notification. This being unreasonable and unconstitutional deserves to be and is accordingly quashed and set aside.*

(iv) *That, descendants of persons who have obtained COI on the basis of their father being Government servants in the Government of Sikkim prior to 31.12.1969, falling under Item No.5 of the Notification No.66/Home/95, dated 22.11.1995 and substituted Item No.5 of Notification of 1996 are entitled to obtain COI. This also includes the third generation and their subsequent generations.*

(v) *The COI obtained by such persons shall have the same utility and*

*benefits as it does for categories listed in Item Nos.1 to 4 of the Notification No.66/Home/95, dated 22.11.1995, and the Notification No.119/Home/2010, dated 26.10.2010, sans discrimination on any count.”*

**32.** Mr. S.S. Dey, learned Senior Advocate assisted by Mr. A. Bhalla, learned Additional Advocate General, Sikkim, submits that the insertions in the impugned notifications are only reiteration and continuation of the contents of the Notifications dated 25.09.1976, 28.01.1980 and 09.04.1981.

Even a cursory perusal of the above memoranda would reveal that it was the governmental policy of giving preferential treatment to Sikkimese nationals, termed as ‘locals’, and was limited to only such locals whose parents’ names had been recorded on or before 15.05.1975 in the relevant Government Register at the time of seeking employment. The same principle was reiterated in the Notification dated 09.04.1981 directing the District Collectors to issue such certificates to persons/applicants to enable them to apply for employment in the State and that such entitlement was extended to a person whose father/husband had been in service in the State Government on or before 31.12.1969.

These, it has been contended on behalf of the State, are no new additions thereby limiting the utility of the COI for the purposes of employment in the State and for no other purpose.

It was further submitted that the distinction and reasonable classification of non-Sikkimese nationals and Sikkimese nationals, as made in clause 4(4) of the Sikkim Government Establishment Rules, 1974, having been upheld by the Supreme Court in **Surendra Prasad Sharma** (supra), the same cannot be dubbed as arbitrary or irrational.

It has been categorically stated on behalf of the State that the COI was limited for the purpose of seeking employment only and if persons of other categories were the recipients of other privileges, it was not on account of the COI issued to them, but on their being eligible for other privileges beyond employment. Thus, the Notifications dated 22.11.1995, 27.09.1996, 02.06.2006 and 26.10.2010 are the policy decisions of the Government of Sikkim, which are rooted in the statutory enactments of clause 4.4. of the Sikkim Government Establishment Rules, 1974 and the Sikkim Subjects Register, which are saved by the constitutional mandate of Article 371-F and 371-G, making them immune to any interference on the anvil of Articles 14, 15 and 16 of the Constitution of India.

**33.** *Per contra*, Mr. K.N. Choudhury, learned Senior Advocate for the respondents has submitted that notwithstanding the judgment of the Supreme Court in **Surendra Prasad Sharma** (supra) validating the constitutionality of Rule 4(4) of the 1974 Rules, the issue which had fallen for consideration before the learned Single Judge in the High Court of Sikkim was whether a crystallised right accrued in favour of the respondents under 1961 Regulation and as saved by the adoption of the Sikkim Laws and Order of 1975 dated 13.09.1975, whereby the provisions of General Clauses Act 1897 was made applicable; as well as the Notification dated 03.04.1989, issued by the Government of India laying down the guidelines to determine the eligibility of persons entitled to be construed as Sikkimese, are in practicality have been over-reached.

The regulation 8(3)(a)(b) of the 1961 Regulation provided that a

King of Sikkim possessed the power to naturalise the persons upon application made in the prescribed format provided they had been in service of the Government of Sikkim for a period not less than 10 years immediately preceding the application, and those who had rendered meritorious service to the State.

In the 1961 Regulation, no date was prescribed and, therefore, the respondents had a vested right to claim the status of a Sikkimese by virtue of their grandparents and parents being in service of the Government of Sikkim prior to the cut-off date, which vested right cannot be undone. The rights of the respondents flow from the 1961 Regulation, as saved by the Notification dated 13.09.1975.

**34.** The right conferred on the government servants under 1961 Regulation, according to the respondents, stood at a higher pedestal than even those who were born in the territory of Sikkim. To buttress the afore-stated statement, it was argued that for a person to become Sikkim Subjects on the basis of birth, his date of birth should have been before the commencement of the 1961 Regulation (03.07.1961) and for others to become eligible as a Sikkim Subject under the 1961 Regulation, they were required to be the residents in Sikkim ordinarily for a period of 15 years prior to 03.07.1961. This fetter was not imposed on the government servant who could acquire the eligibility by being in government service for a period of ten years even after the commencement of the Regulation 1961. This preference was shown to the government servants in recognition of their services rendered to the Monarch. It was, thus, argued that such crystallised rights of the respondents could not have

been taken away by means of an executive fiat, as has been done in the present case.

**35.** It was reiterated that though the Office Memorandum dated 09.04.1981 was issued for the purposes of employment, but the certificate of identification was/is accepted for all intent and purposes, namely, as a proof of domicile, right to buy and sale moveable property, education etc. without any discrimination being made against any person falling in category 4 of the Office Memorandum dated 09.04.1981. In fact, all along, they had been treated at par with persons categorised in clauses 1, 2 and 3 of the Office Memorandum of 1981. The afore-noted Office Memorandum clearly reflects the conscious decision of the State towards the persons whose parents and grandparents had rendered service to the Monarch. The impugned notifications of 1995, 1996 and 2006, the respondents have argued, have the potential of denying their right.

It is argued that the learned Single Judge rightly found out that there was arbitrariness in the decision-making process in issuing the impugned notifications as manifest arbitrariness has been recognised as a ground for striking down a statute. [*Refer to - Navtej Singh Johar vs. Union of India :: (2018) 10 SCC 1*].

Lastly, it was submitted that following the promulgation of Sikkim (Citizenship) Amendment Order dated 03.04.1989, which provided that any person whose name was eligible to be entered in the Register maintained under the 1961 Regulation, but was not entered because of any genuine omission, would also be deemed to have become a citizen of India with effect from that date, and a Central Government

Committee having been constituted to identify such persons/applicants, the intention to accord the respondents the same status is very clear.

**36.** Mr. Choudhury has also affirmed that using that window, many persons other than the respondents have also applied, but their cases have not yet been considered. Presently 18,000 applications are pending before the Committee.

**37.** At the outset, it ought to be clarified that a COI is not equivalent to Sikkim Subjects' status. It is neither a substitute for inclusion in the Sikkim Subjects Register nor a determinant of citizenship. The distinction between the status and administrative recognition for a limited purpose, we are of the view, is very crucial.

**38.** In ***Surendra Prasad Sharma*** (supra), the Supreme Court upheld the validity of Sikkim Establishment Rules, 1974 with regard to appointment in government service, recognising the legitimacy of preferential treatment in public employment for Sikkim Subjects. This judgment was on the basis of the special provisions made to preserve the identity and protect the interest of the inhabitants of Sikkim within the permissible constitutional structure in terms of Article 371-F. The employment-related classifications, rooted in Sikkim historical context, have already received the judicial imprimatur.

**39.** Now, the arguments based on Articles 14 and 16 of the Constitution need to be analysed and evaluated.

**40.** It needs no reiteration that for a classification to be permissible,

there must be an intelligible differentia between the separately classified people and the rational nexus for such classification with the object sought to be achieved. Applying that principle, the classification here is between the "Sikkim Subjects" and certain "non-Sikkimese subjects" categories granting limited recognition for employment purposes. The object is clearly to regulate the eligibility for public employment which, in our view, is in consonance with the Establishment Rules of 1974. The restrictions of COI to employment purpose only maintains this objective and prevents its misuse as a surrogate for broader civil status. A COI could be given to others also, who are categorised differently, but for all practical purposes, the COI under this structure is a cross-board for the purposes of employment only, which can be seen from the continuity of the use of the expression "*for the purposes of employment*" since 1976.

**41.** The communication of 2006 clarifying that the benefits will not extend to subsequent generations indefinitely and perhaps infinitely, cannot be said to be arbitrary. The benefits tied to a historical advantage/disadvantage, or classification, has to be reasonably limited. The extension of benefits to third generation would dilute the original basis of classification. The State is definitely entitled to draw a line, provided it is not manifestly arbitrary.

**42.** This aspect can be viewed from another angle as well.

**43.** It would be profitable to extract Section 8 of the Sikkim Subjects Regulation, 1961 hereinbelow:

"8. *Naturalized Subjects-*

(1) *The Government of His Highness may; if application is made to,*

*them in the manner provided by rules under this Regulation by any person of full age and capacity who at the date of the commencement of this Regulation is a national of another State but otherwise fulfills the requirements, of section 3 of this Regulation, to be a Sikkim Subject, grant to him a certificate of naturalization if he renounces his former nationality; and the person to whom such a certificate is granted shall on taking oath of allegiance, and on his name being entered in the Register to be maintained under this Regulation, be a Sikkim Subject by naturalization from the date on which the certificate is granted.*

*(2) If a certificate is granted to any person under the last foregoing sub-section his wife after renouncing her former nationality and his minor children may, on application made in this behalf and taking oath of allegiance be granted certificate of naturalization.*

*(3) The Government of His Highness shall also have the power to naturalize a person upon application made therefor in the manner prescribed by the rules, provided that the Government of His Highness are satisfied that-*

*(a) he has been in the service of the Government of Sikkim for a period of not less than ten years immediately preceding the date of his application, or*

*(b) he has rendered meritorious service to the State, and the person to whom such a certificate is granted shall, on taking oath of allegiance, and upon his name being entered in the Register of Subjects, be a naturalized Sikkim Subject from the date on which the certificate was granted.*

*(4) The Government of His Highness may at the same time naturalize the wife and minor children of a person who is granted a certificate of naturalization if application therefor is made.”*

**44.** A bare reading of Section 8 would indicate that a government servant could be naturalized as a citizen but only upon an application made thereof in the manner prescribed by the Rules subject to the satisfaction of the King of the conditions, namely, that such government servant has been in service of the Government of Sikkim for a period of not less than ten years immediately preceding the date of his application or has rendered meritorious service to the State and the person to whom

such certificate is granted shall, on taking oath of allegiance, and upon his name being entered in the Register of Subjects, would be a naturalized Sikkim Subject from the date on which the certificate is granted. While saying so, the Regulation of 1961 further affirms that with such naturalization of a government servant, his wife and minor children also would be granted a certificate of naturalization but only if application thereof is made. The concession in this case is limited to the wife and children and not the grandchildren.

**45.** In the present case, such clarificatory note, not extending the benefits to the third generation, does not violate Article 14 of the Constitution of India. Even at the cost of repetition, we say that the impugned notifications in no way determine the citizenship or the criteria for inclusion in the Sikkim Subjects Register, or any civil status beyond employment legitimacy. It is only in the nature of regulations for the use of a specific certificate, namely, COI.

**46.** We must not ever lose sight of the fact that Article 371-F is not only a transitional provision; rather it is a structural accommodation of diversity within the constitution. The impugned notifications in succession in 1976, 1980, 1981, 1995 and 1996, all *prima facie* treat the COI as employment-linked recognition. The notifications of 1995 and 1996 merely clarified and consolidated this position without imposing any new disability.

**47.** In international comparative jurisprudence also, the principle that a classification must remain tied to its objectives and must not

expand beyond its justificatory basis, finds resonance.

**48.** The apprehension of the respondents that they would be treated as 'non-locals' proceeds on a misunderstanding. Such COI with limited utility does not alter the citizenship; it also does not deny recognition under the Sikkim Subjects framework and, for sure, it does not affect civil right generally. The certificate, namely, the Certificate of Identification issued by the sources under the administrative framework merely limits the evidentiary use of that certificate.

**49.** We, thus, conclude that the impugned notifications are rooted in a consistent historical policy and is based on a constitutionally permissible classification without infringing Article 14. Article 14 does not compel the State to erase all distinctions that are integral to a constitutionally protected historical framework.

**50.** The impugned notifications, in our estimation, do not operate in the domain of the fundamental rights except to the limited extent, with its structure and administrative classification, for the purposes of employment policy, and the State is well within its competence to issue such notification so long as it does not transgress the constitutional prohibition against arbitrariness.

In fact, it would be more appropriate for the respondents to pursue their respective claims before the Central Government Committee for their names to be included in the Sikkim Subjects Register which, for some reason or the other, were left out.

**51.** Viewed thus, we are left with no option but to affirm the

competence of the State and its instrumentalities in coming out with such clarificatory notifications, limiting the utility of the COI for the purposes of employment only and for no other purpose, and to declare that the interference by the learned Single Judge in WP(C) No.66/2016 was not justified.

52. We order accordingly.
53. The judgment impugned thus is set aside.
54. The writ appeal stands disposed off.
55. No order as to cost.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**