

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

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**SINGLE BENCH: BHASKAR RAJ PRADHAN, JUDGE.**  
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**W.P. (C). No. 07 of 2018**

Krishna Lal Timsina,  
S/o Shri Meghnath Timsina,  
Aged about 44 years,  
Occupation Government Service,  
R/o Yangyang Bazar,  
P.S. Ravangla, South Sikkim.

....Petitioner

**Versus**

1. State of Sikkim  
Through the Chief Secretary,  
Government of Sikkim,  
Gangtok, Sikkim.
  2. Secretary,  
Department of Health & Family Welfare,  
Government of Sikkim,  
Gangtok, Sikkim.
  3. Secretary,  
Department of Home,  
Government of Sikkim,  
Gangtok, Sikkim.
  4. Secretary,  
Department of Personal, ADM Reforms,  
Training & Public Grievances,  
Government of Sikkim,  
Gangtok, Sikkim.
- ....Respondents

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**Writ Petition under Article 226 of the Constitution of India**

**Appearance:**

Ms. Dr. Doma T. Bhutia, Mr. Raghavendra Kumar,  
Mr. Ratan Gurung and Ms. Preeti Chettri, Advocates.

Mr. Thinlay Dorjee Bhutia, Govt. Advocate and Mr.  
S.K. Chettri , Asstt. Govt. Advocates.

**ORDER (ORALLY)**

(01.05.2018)

**Bhaskar Raj Pradhan, J**

1. A Writ Petition had been filed before this Court on 21.03.2018 and resubmitted on 02.04.2018 after curing the defects pointed out with the following prayers:

- “1. Issue Writ, Order or direction in the nature of Mandamus, Certiorari or any other writ, order or direction to the State Respondents No. 2, 3 and 4 to take appropriate decision within a reasonable time frame and pass a reasoned order on the Representations of Petitioner i.e. Annexures P-2, P-3 & P-4 respectively and to intimate to the Petitioner about the same.
2. Any other directions or orders as this Hon’ble Court deem fit and proper may also be kindly issued.”

2. On hearing the Learned Counsel for the Petitioner on 04.04.2018 this Court issued notice upon the Respondents. Liberty was also granted to the State-Respondents to take a decision on the representations made by the Petitioner.

3. The Respondents No. 1 and 2 have filed an application seeking to place on record two communications addressed to the Petitioner. Amongst the two communications the letter No. 305/HC,HS&FW dated 23.04.2018 issued to the Petitioner states:-

**“HEALTH CARE, HUMAN SERVICES AND FAMILY WELFARE  
DEPARTMENT GOVERNMENT OF SIKKIM,  
GANGTOK, SIKKIM.**

No:305/HC,HS&FW/

Dated 23.04.2018

To,

Mr. K.L. Timsina,  
R/o Yangyang Bazar,  
P.S. Ravangla, South Sikkim.

Sir,

The government has considered your representations dated 8/12/2017 w.r.t. Mr. Chandra Jit Adhikari and Mr. Rup Narayan Sangal, regular MPHWS (Male) and Dr. Kanu Priya Rai, Medical Officer In-charge of Yangyang PHC, South Sikkim who is employed on contract under NHM. On examination of your representation and the nature of allegation made therein and on consideration of the entire facts, the government has found your representations/requests untenable. Accordingly, the government has decided not to grant sanction under section 197 Cr.PC.

Thanking You,

Yours faithfully,

Sd/-  
Additional Secretary  
HC, HS&FW Department

Copy for information to:-

1. Shri Santosh Kr. Chettri, Asstt. Advocate-cum-APP, O/o the Advocate General, High Court of Sikkim.”

4. The Respondent No.1 and 2 have also sought to place on record another communication addressed to the Petitioner bearing No.330/HC,HS&FW/2018 dated 26.04.2018 which states as follows:

**“HEALTH CARE, HUMAN SERVICES AND FAMILY WELFARE  
DEPARTMENT GOVERNMENT OF SIKKIM,  
GANGTOK, SIKKIM.**

No.330/HC,HS&FW/2018

Dated:26.04.2018

To,

Shri K.L. Timsina,  
R/o Yangyang Bazar,  
P.S. Ravangla, South Sikkim.

*Sub: Seeking permission for sanction under section 197 Cr.P.C.*

*Sir,*

*In addition to our earlier letter no.305 dated 23.4.2018 and with reference to your representations dated 8.12.2017 on the afore mentioned subject, I am to convey the following:*

*That with regard to the matter at hand, there is no reasonable material whether you had filed any written complaint, as no such written complaint or FIR is enclosed with the application. Further, there is also no clear indication as to whether you intend to file the complaint/FIR before the concerned Thana or concerned Superintendent of Police or before the concerned Judicial Magistrate as required under the relevant provision of law.*

*Therefore, mere allegation made in the complaint is not sufficient for grant of sanction under section 197 Cr.PC. In view of above and on examination of your representation and the nature of allegation made therein and on consideration of the entire facts, the govt. has found your request untenable.*

*Accordingly, the govt. is of the considered view that sanction under section 197 Cr.PC in r/o Dr. Kanu Priya Rai, MO/IC, Yangang PHC, Mr. Chandra Jit Adhikari and Mr. Rup Narayan Sangal, MPHWS (Male) shall not be granted.*

*Yours faithfully,*

*Sd/-  
Additional Secretary*

*Copy to:-*

*1.Shri Santosh Kr. Chettri, Asstt. Advocate-cum-APP,  
O/o the Advocate General, High Court of Sikkim.“*

**5.** The said application being allowed the afore-quoted two communications are taken on record. On examination of the said communications it is evident that the solitary relief sought for by the Petitioner for a direction to the State-Respondents to take appropriate decision within a reasonable time frame and pass a

reasoned order on the representations of the Petitioner and further to intimate the Petitioner about the same has been achieved and the decision by the State-Respondent has been taken and communicated. Nothing further remains in the present Writ Petition. The present Writ Petition is thus disposed off as being infructuous.

**6.** Ms. (Dr.) Doma Bhutia, Learned Counsel for the Petitioner submits that the statements and allegations made in the two communications of the Respondent No. 1 and 2 quoted above are refuted. Ms. (Dr.) Doma Bhutia, Learned Counsel seeks liberty of this Court to challenge the aforesaid two communications if so, required. Liberty need not be granted to challenge any action of the State which is not the *lis* before the Court in the present action if it is illegal. Liberty is inherent in any wrongful action of the State.

**7.** No order as to costs.

Sd/-  
**(Bhaskar Raj Pradhan)**  
**Judge**  
01.05.2018

Approved for reporting: yes.  
Internet: yes.

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