

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

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**S.B.: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**  
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**I.A No.01 of 2018**  
**IN**  
**W.P.(C) No.27 of 2018**

Dipendra Adhikari,  
Aged about 24 years,  
S/o Shri Kapil Mani Sharma,  
R/o upper Lasso,  
Tashiding, P.O Sinek, P.S.Tashiding,  
West Sikkim.

.....Petitioner

Vs.

1. State of Sikkim  
Through the Chief Secretary,  
Government of Sikkim,  
Gangtok, East Sikkim.
2. Sikkim Public Service Commission,  
Through its Secretary,  
Old Tourism Complex, M.G.Marg,  
Gangtok, Sikkim – 737101.
3. Department of Personnel, Adm.  
Training & Public Grievances,  
Through its Secretary,  
Gangtok, Sikkim- 737101
4. Mr. Aswin Nirola,  
S/o. Mrs. Geeta Nirola (Assistant Professor)  
Near Government College Girls Hostel,  
Gairigaon, Tadong, East Sikkim.

.....Respondents

Mr. Arun Cheetri,  
S/o Lal Bahadur Chettri,  
R/o Lower Marchak Ranipool,  
East Sikkim.

.....Applicant

**An application under Article 226 and Rule 101 of Sikkim High Court (Practice and Procedures) Rules 2011 for impleadment.**

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**Appearance:**

Dr. Doma T. Bhutia, and Ms. Preeti Chhetri, Advocates for Applicant.

Mr. Sangay G. Bhutia and Ms. Mon Maya Subba, Advocate for the Petitioner.

Ms. Pollin Rai, Assistant Government Advocate for Respondent No.1 & 3.

Mr. Bhushan Nepal, Advocate for Respondent No.2.

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms. Malati Sharma, Advocates for Respondent No.4.

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**ORDER**

**(07.09.2018)**

**Bhaskar Raj Pradhan, J**

1. The Writ Petition filed by the Petitioner seeks to challenge the selection and subsequent appointment of the Respondent No.4 to the post of Under Secretary in the Government of Sikkim. The Petitioner prays for an expert committee to re-examine the official answer keys for the subject of philosophy for seven questions, re-evaluation of the 'OMR' sheets of the Petitioner for the seven questions on the basis of the answer keys as finalised by the expert committee to be constituted, appointment of the Petitioner to the post of Under Secretary and cancellation of the appointment of the Respondent No.4. The challenge is on two primary grounds. The Petitioner alleges that the Respondent No.4 did not have the Other

Backward Class certificate at the relevant time of submission and therefore, his selection was bad in law. The Petitioner also alleges that some of the answer keys provided in the written examination were incorrect due to which he had lost marks. After obtaining information when representation was made to the concerned authorities four marks were added to his total but the Petitioner is certain that he would be entitled to more marks than what he has been given in the written examination on the grounds stated in the Writ Petition.

- 2.** Arun Chettri, belonging to the Other Backward Classes (State list) (OBC (SL) ) who had obtained 526.8 marks and positioned 2<sup>nd</sup> in the said category after the Respondent No.4 who had secured 531 marks and before the Petitioner who had secured 525.1 marks in the same category is seeking to implead himself in the present Writ Petition on the ground that he would be adversely affected by any order passed by this Court in the present Writ Petition.
- 3.** Heard Dr. Doma T. Bhutia, learned Counsel for the Applicant, Mr. Sangay G. Bhutia, learned Counsel for the Petitioner, Mr. N. Rai, learned Senior Advocate for the Respondent No.4, Ms. Pollin Rai, learned Assistant Government Advocate for the Respondent No.1 and 3 and Mr. Bhusan Nepal, learned Advocate for the Respondent No.2.

4. Dr. Doma T. Bhutia would submit that any order passed in the present Writ Petition would adversely affect the Applicant and therefore, the Applicant is a necessary party. She would rely upon the Judgment of the Supreme Court in re: **Vijay Kumar Kaul & Others v. Union of India & Others**<sup>1</sup>.
5. Mr. Sangay G. Bhutia, *per contra*, would submit that since the Applicant has not challenged the total marks obtained by him, any change in the total marks of the Petitioner on recalculation would not adversely affect the Applicant and that the Petitioner would be granted marks purely on his own merits which has been illigally denied by the State Respondents. He would rely upon the Judgments of the Supreme Court in re: **Poonam v. State of Uttar Pradesh & Others**<sup>2</sup>, **Vidur Impex & Traders (P) Ltd. v. Tosh Apartments (P) Ltd.**<sup>3</sup>, **Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.**<sup>4</sup> as well as the Order passed by this Court in re: **Sri Avantika Contractors (I) Ltd. v. Union of India & Ors**<sup>5</sup>.
6. Mr. N. Rai, learned Senior Advocate would categorically submit that the Respondent No.4 has no objection if the Applicant is arrayed as a Respondent in the present proceeding.

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<sup>1</sup> (2012) 7 SCC 610

<sup>2</sup> (2016) 2 SCC 779

<sup>3</sup> (2012) 8 SCC 384

<sup>4</sup> (2010) 7 SCC 417

<sup>5</sup> 2018 SCC OnLine Sikk 47

7. Necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.
8. In the present proceedings the relief is claimed against the State of Sikkim, the SPSC, Department of Personnel, Administrative Reforms, Training & Public Grievances and Mr. Aswin Nirola (Respondent No.4) who had been appointed as Under Secretary and they are all arrayed as Respondents. The said Respondents are the necessary parties to be impleaded against whom the reliefs are sought and in whose absence no effective decision can be rendered by this Court.
9. The process of selection and appointment of Under Secretaries to the Government of Sikkim seems to entail written examination, viva-voce, computation of statement of marks obtained by the candidates in the written examination for the viva-voce, computation of marks obtained by the candidates in the viva-voce, computation of consolidated marks obtained in written examination and viva-voce, selection and recommendation by the SPSC and thereafter appointment. All the candidates who have passed the written examination and obtained certain percentage of marks would have a legitimate expectation to be selected for the interview based on the marks obtained. All the candidates who have

passed the viva-voce after the written examination and obtained certain percentage of marks would have a legitimate expectation to be selected for the post and appointment on the basis of the consolidated marks obtained. The selection of the candidate against each vacant post must be purely on the basis of merit of their performance in the written examination as well as viva-voce. It is in these circumstances that the computation of marks obtained by each of these candidates would have a direct bearing on the ultimate selection.

- 10.** The consolidated statement of marks obtained by the candidates selected for the viva-voce/interview for the post of Under Secretary for the year 2017 forwarded to the Applicant vide communicated dated 24.01.2018 reflects the following position with regard to the OBC (S L):-

<i>ROLL NO.</i>	<i>NAME</i>	<i>F/M</i>	<i>Category</i>	<i>Marks/900</i>
<i>17510400</i>	<i>ASWIN NIROLA</i>	<i>MALE</i>	<i>OBC(SL)</i>	<i>531</i>
<i>17510190</i>	<i>ARUN CHETTRI</i>	<i>MALE</i>	<i>OBC(SL)</i>	<i>526.8</i>
<i>17511103</i>	<i>DIPENDRA ADHIKARI</i>	<i>MALE</i>	<i>OBC(SL)</i>	<i>525.1</i>

- 11.** The subsequent statement of marks in order of merit of candidates selected for viva-voce/ interview for the post of Under Secretary 2017 filed by the Applicant with the Rejoinder as Annexure-P2 reflects the following position with regard to the OBC (S L):-

<i>Sl. No</i>	<i>Roll No.</i>	<i>Name</i>	<i>F/M</i>	<i>CAT</i>	<i>Reservation allotted</i>
7.	17510400	ASWIN NIROLA	MALE	OBC (SL)	OBC (SL)
8.	17511103	DIPENDRA ADHIKARI	MALE	OBC (SL)	
9.	17510190	ARUN CHETTRI	MALE	OBC (SL)	

**12.** It is seen that the Applicant who was in the second position in the original list of merit of candidates selected for viva-voce/ interview for the post of Under Secretary for the year 2017 is now in the third position in the new list.

**13.** The Applicant submits that the Applicant had challenged the selection and appointment of the Respondent No.4 by filing Writ Petition No.12 of 2018 titled: **Arun Chettri v. State of Sikkim & Ors.** pending adjudication before this Court based on the first list of merit of candidates selected for viva-voce/ interview for the post of Under Secretary for the year 2017 as he was in the second position. If the selection and appointment of the Respondent No.4 was found to be illegal then it would be the Applicant who, due to his position in the merit list just below the Respondent No.4, must be selected and appointed as Under Secretary. It is the contention of the Applicant that even if this Court were to examine only the merit of the performance of the Petitioner due to which he would be entitled to a higher marks the effect may be to relegate the position of the Applicant lower down and thus, adversely affecting the Applicant.

- 14.** Any person who may be adversely affected by the grant of the reliefs prayed for by the Petitioner must be impleaded as party because in his absence an effective order may be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. The grant of the prayers as prayed for by the Petitioner may change the position of the Applicant in the consolidated merit list adversely affecting him.
- 15.** In the circumstances, the Applicant must be held to be a proper party in the present proceeding. Resultantly, the Application for impleadment is allowed.
- 16.** The Applicant is impleaded as party Respondent.
- 17.** The array of Respondents may be accordingly amended. The Applicant as party Respondent is permitted to file counter affidavit, if so desired.
- 18.** I.A No.01 of 2018 stands disposed.

**(Bhaskar Raj Pradhan)**  
**Judge**  
07.09.2018