

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

**Dated: 04<sup>TH</sup> DECEMBER, 2018**

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**D.B.: HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CHIEF JUSTICE.**  
**HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE.**  
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**W.P. (PIL) No. 12 of 2018**

COURT ON SUO MOTU

Versus

Respondents : 1. The Chief Secretary,  
Government of Sikkim,  
Gangtok.

2. The Additional Chief Secretary-cum-  
Principal Secretary,  
Human Resource Development Department,  
Government of Sikkim, Gangtok.

3. The Principal Chief Engineer-cum-Secretary,  
Roads and Bridges Department,  
Government of Sikkim, Gangtok.

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Appearance:

Mr. N. Rai, Sr. Advocate with Ms. Sudha Sewa, Advocate  
as Amici Curiae.

Mr. Karma Thinlay, Sr. Government Advocate with Mr.  
Thinlay Dorjee Bhutia, Government Advocate, Mr. Santosh  
Kr. Chettri, Ms. Pollin Rai, Asstt. Government Advocates  
and Mr. Bhusan Nepal, Advocate as Legal Retainer (HRDD)  
for the Respondents.

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## **JUDGMENT (ORAL)**

### **Chief Justice**

Present Public Interest Litigation was entertained by this Court on the report published in the Nepali vernacular Newspaper (Hamro Prajashakti).

**2.** On 13.08.2018 the following Order was passed by this Court:-

*"It has been reported in a Nepali vernacular newspaper circulated in Gangtok, published on Wednesday, the 8th of August, 2018, that due to rise in water level of the Changey river at South Sikkim which connects Sumsi and other villages, students are compelled to cross the river on foot. That, there has been a constant demand of a Bridge in this place for a long time, but no steps have been taken. That about 3/4 years ago, a student lost his life after being swept away by this river.*

*The Right to Education has been inserted in Article 21A of the Constitution of India to provide for right to access education. This right, by a plethora of Judgments of the Hon'ble Supreme Court has been read into right to life in Article 21 of the Constitution of India (for short "Constitution"). The purpose of the Right of Children to Free and Compulsory Education Act, 2009 (Act of 2009), is to ensure that every child between the age of six to fourteen years is assured of education and the State Government is to discharge this obligation. The Act of 2009 is to enable every child to access quality education irrespective of his socio-economic background and other barriers in order to achieve an egalitarian society. Every child has a right to live with dignity which he can be assured to through education and should he be deprived of this, he is also deprived of his right to life under Article 21 of the Constitution and freedom of speech and expression and as envisaged under Article 19(1)(a) of the Constitution. Hence no impediment should refrain a child from attaining the rights provided to him by the Constitution.*

*Mr. N. Rai, Learned Senior Advocate assisted by Ms. Sudha Sewa, Advocate, are requested to assist the Court as "Amici Curiae" in the matter. A copy of the newspaper report and other documents, if any, be supplied to the Learned Amici Curiae.*

*Issue Notice to;*

- (i) The Chief Secretary, Government of Sikkim, Gangtok.*
- (ii) The Additional Chief Secretary-cum-Principal Secretary, Human Resource Development Department, Government of Sikkim, Gangtok.*
- (iii) The Principal Chief Engineer-cum-Secretary, Roads and Bridges Department, Government of Sikkim, Gangtok.*

*Mr. S. K. Chettri and Mrs. Pollin Rai, Learned Assistant Government Advocates assisting Mr. Karma Thinlay, accept Notice on behalf of the State Government and waive formal Notice.*

*List on 13-09-2018.*

*In the meanwhile, let a status report be filed by the State Government."*

**3.** In compliance of the order dated 13.08.2018, a report was filed on behalf of the Respondent No.1 and 3 in which the Respondent No.3, Chief Engineer, Roads and Bridges Department, Government of Sikkim undertook to construct two culverts across Khapparey Khola and Changey Khola on the link road from Amlisay (Sumsi) To Sokpey (Upper Maidam) under Yangang sub-division in South Sikkim. It was also stated in the affidavit that immediate steps shall be initiated.

**4.** Another progress report was filed by Respondent No.1 and 3 on 01.12.2018. Paragraph 2 of the report reads as follows:

"2. Pursuant to the order dated 12/10/2018 passed by this Hon'ble Court the progress report is as under:-

(i) The Roads & Bridges Department had taken up the construction of two culverts across Changey Kholsa and Khapparey Kholsa along the link road from Amlisay (Sumsi) to Sokpey (Upper Maidam) under Yangang sub-division in South Sikkim.

(ii) The sub-structure for the five meter span culvert at Changey Kholsa is completed and is ready for slab casting. Whereas, at Khapparey Kholsa, the construction of sub-structure is under progress. The overall progress of work as on dated is 50% and the culverts shall be completed by 31.12.2018. The photographs of the ongoing work of culverts at Changey Kholsa and Khapparey Kholsa is enclosed herewith and marked as Annexure R-1."

**5.** Today, Mr. Karma Thinlay, learned Senior Government Advocate submits that the construction work will be completed by 31.12.2018.

**6.** Considering the submission of learned Senior Government Advocate, we disposed of this Public Interest Litigation by directing the Respondents to complete the work on or before 15.02.2019.

**7.** However, we permit Mr. N. Rai, learned Amicus Curiae to file an affidavit after 15.02.2019, in case, the work is not completed.

**8.** We also direct Respondent No.3, Principal Chief Engineer-cum-Secretary, Roads and Bridges Department, Government of Sikkim to pay a sum of Rs.50,000/- (Rupees Fifty Thousand) to

Mr. N. Rai, learned Amicus Curiae for his valuable assistance to  
the Court.

**Judge**

04.12.2018

**Chief Justice**

04.12.2018

Index : ~~Yes~~ / No  
jk/avi Internet : Yes / ~~No~~