

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22094 of 2019

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Rajbind Kumar Sharma, Son of Ramdas Sharma, Resident of Mohalla-
Brahmottar Colony, Kharaunia Bagicha, P.S.-Kusheshwar Asthan, District-
Darbhanga.

... .. Petitioner/s

Versus

1. Nitish Kumar, Honorable Chief Minister, Bihar.
2. The State of Bihar, through Chief Secretary, Patna.
3. The Chief Accountant General, Patna.
4. The Director General of Police, Patna.
5. The Principal Secretary, Home Department, Patna.
6. The Principal Secretary, Public Health Engineering Department, Patna.
7. The Principal Secretary, Rural Work Department, Patna.
8. The Principal Secretary, Panchayati Raj Department, Patna.
9. The Principal Secretary, Vigilance, Patna.
10. The Project Incharge, Mukhyamantri Nal Jal Yojna, Bihar.
11. The Project Incharge, Mukhyamantri Nal Jal Yojna, Patna, Bihar.
12. The Chairman, Central Finance Commission, New Delhi.
13. The Commissioner, Darbhanga.
14. The District Magistrate, Darbhanga.
15. The Subdivisional Officer, Darbhanga.
16. The Superintendent of Police, Darbhanga.
17. The Block Development Officer, Dulhinbazar, Patna.
18. The Block Development Officer, Maner, Patna.
19. The Block Development Officer, Danapur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manibhushan Pratap Sengar, Advocate
Mr. Jai Prakash, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)



Date : 18-11-2019

Petitioner has prayed for the following reliefs:-

- i. An appropriate direction be issued commanding the Respondents to conduct CBI inquiry of the scams or misappropriation/swindling and embezzling of public money of almost more than 8000 of crores on the name of water supply for drinking to each and every dwelling house under the Scheme of Mukhyamantri Nal Jal Yojna in Bihar including Blocks Bihta, Bikram, Pali, Dulhin Bazaar, Danapur, Maner, Barh, Pandarak, Fatuha, Athmalgola, Masaurhi and others of Patna District and in other districts of Bihar where the formality or no work has been done on the name of aforesaid Nal Jal Yojna and only misappropriation of public money has taken place and also prosecute and punish the guilty persons for the same in accordance with law.
- ii. An appropriate direction be issued to complete work of Nal Jal Yojna or supply of water to each and every dwelling house properly and in quality manner and also make proper arrangement for the maintenance of the same.
- iii. An appropriate direction be issued directing the respondents to make direct control over the Mukhyamantri Nal Jal Yojna and make recovery of the huge amount of Public money



misappropriated on the name of work of Mukhyamantri Nal Jal Yojna such that this type of embezzlement of public would not occur in future.

- iv. Any other appropriate writ or direction be issued which may be applicable in the facts and circumstances of the case.”

Mr. Jai Prakash, learned counsel for the petitioner, prays for an adjournment. Well we are not inclined to adjourn, for we have gone through the file and spent time in perusing the same. We find the present petition to be absolutely not maintainable, apart from the factum of averments made, which are absolutely vague and unspecific. Allegations of embezzlement against Hon’ble Chief Minister of Bihar, who has been arrayed as a party by name, are absolutely malicious. Vaguely it stands mentioned that a sum of Rs.8000 crores under the Scheme of Mukhyamantri Nal Jal Yojna in Bihar stands misappropriated by the functionaries of the State. How? and in what manner? it is so done is embedded solely in the mind of the petitioner. How is the Chief Minister even associated with such illegality is not spelt out.

In **Mumbai Kamgar Sabha v. M/s Abdulbhai Faizullabhai, 1976 (3) SCC 832**, Krishna Iyer J. introduced and propagated Public Interest Litigation as a means to provide



equitable representation to the unrepresented and down trodden of the society. The concept was expounded by Bhagwati J. in **Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 98**. The abysmal situation of under trial prisoners in Bihar came to be examined and directions were issued for taking appropriate action for speeding up of the trial. Further, he emphasized that PIL is an act done with an intention to protect or benefit of the public. In **S.P. Gupta v. Union of India, AIR 1982 SC 149**, he opined that *“Whenever a legal wrong or a legal injury is committed upon an individual or a particular class of individuals by reason of violation of any fundamental/legal right or without authority of law any legal wrong is committed or legal injury is inflicted upon, or any illegal burden is inflicted upon downtrodden section of individual(s) by reasons of poverty, disability, helplessness, poor economic and social conditions, are unable to approach the judiciary for relief then any member of the society can file a writ under Article 226 of the Constitution in the High Court and in case of breach of the fundamental rights of such individuals or class of individuals, relief can be sought in the Supreme Court by virtue of Article 32 of the Constitution.”*

In **D. N. JEEVARAJ V. State of Karnataka (2016) 2 SCC 653**, Madan B. Lokur J. has culled out the following process for



adjudication of public interest litigation, more so in a writ of mandamus as is sought to be enforced, at para Nos.34 to 38 as under:

“34. The learned counsel for the parties addressed us on the question of the bona fides of Nagalaxmi Bai in filing a public interest litigation. We leave this question open and do not express any opinion on the correctness or otherwise of the decision of the High Court in this regard.

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* [*Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504] to this effect as follows: (SCC p. 515, para 16)

“16. The writ petitions before us are not inter partes disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court.”

36. A considerable amount has been said about public interest litigation in *R&M Trust [R&M Trust v. Koramangala Residents Vigilance Group, (2005) 3 SCC 91]* and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be



somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organisation or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India v. S.B. Vohra* [*Union of India v. S.B. Vohra*, (2004) 2 SCC 150 : 2004 SCC (L&S) 363] that: (SCC p. 160, paras 12-13)

“12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”



38. A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd. v. Union of India* [*Saraswati Industrial Syndicate Ltd. v. Union of India*, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)

“24. ... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd Edn.), Vol. 11, p. 106:

‘198. *Demand for performance must precede application.*—As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.’

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever



is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution.”

Now applying the aforesaid principles, we find the petitioner not to have furnished any detail of his having rendered any service as a social worker. He has no direct or indirect interest or connection with the matter in issue. Allocation of funds under the 14th Finance Commission is for providing clean drinking water to each and every dwelling house under the scheme of Mukhyamantri Nal Jal Yojna in Bihar. How and in what manner there is embezzlement or misappropriation or defalcation of amount, more so without any corroborative or supportive material remain unexplained.

The doctrine of citizen standing laid down in **People’s Union of Civil Liberties v. Union of India, (2003) 2 SCR 1136**, marked an epoch in the significant expansion of the court’s rule from a protector of individual rights to a ‘guardian’ of the rule of law, whenever and wherever it is threatened by official apathy, which, in the instant case, to the best of our judgement remains unexplained and is wanting at this point in time. There is much which can be said further. Was the petition only to gain cheap popularity or pursuing the cause general in nature or was it filed to black mail certain individual? Any which way, we find the same



to be an abuse of the process of law and as such we dismiss the writ petition, with a warning to be careful in future.

(Sanjay Karol, CJ)

(Dinesh Kumar Singh, J)

Sunil/-

AFR/NAFR	
CAV DATE	
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