

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17583 of 2017

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Ajay Kumar Chaubey, S/o Kamlelshwar Chaubey, Resident of Village-
Salempur, P.S.-Sidhwalia Dist.-Gopalganj. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Bihar.
2. The Principal Secretary, Water Resource Department, Bihar.
3. The Chief Engineer Water Resource Department, Siwan.
4. The District Magistrate, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : None
For the Respondent/s : Mr. Harish Kumar -GP 8

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 06-01-2020 The petition filed on 28.11.2017 is listed for hearing
for the first time today before this Court.

Petitioner has prayed for the following reliefs:-

- (i) For issuance of writ of mandamus or any other writ /writs, order/ orders, direction/ directions to the State respondent making for tatt pucca Bandh/Durable, strong embankment on river Gandak especially from Parsauni Dhala to Dumaria which suffers flood causing breach in the embankment every year costing life of humans cattle's and property.
- (ii) For making strong embankment instead of repairing the 70 years old tatt Bandh which was made by Britishers.
- (iii) For taking action against the concerned officials who did gross irregularities in the repair of Bandh/embankment resulting of flood causing breaches in the tatt Bandh.
- (iv) For any other relief or reliefs the Court may deem fit in the facts and circumstances of the



case.”

We find that the petitioner has not approached the authorities concerned before filing the instant petition as is required in view of the law laid down by Hon’ble Apex Court in **D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653** in paragraphs 34 to 39 thereof which read 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.”

As such, we dispose of the writ petition reserving liberty to the petitioner to first approach the authority concerned and to take appropriate action in accordance with law.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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