

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9834 of 2018

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Taxpayers Forum through its President namely Dr. Ajit Kumar Pathak, a practicing lawyer, Son of Late Radhey Shyam Pathak, resident of House No. 40, Gandhi Nagar, Boring Road, P.S.- Sri Krishnapuri, District- Patna.

... .. Petitioner/s

Versus

1. The Union Of India through Cabinet Secretary, Government of India, New Delhi.
2. Cabinet Secretary, Government of India, New Delhi.
3. Finance Secretary, Govt. of India, New Delhi.
4. Chairman, Central Board of Direct Taxes, North Block, New Delhi.
5. Chief Principal Commissioner, Income Tax Department, Bihar and Jharkhand, Patna.
6. The Secretary, Department of Home (Special) Govt. of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Adv.
For the Respondent/s	:	Mr. Anshuman Singh, AC to AG
For Union of India		Mr. S.D. Sanjay, Addl.S.G.
		Mrs. Poonam Singh, CGC
For Income Tax Deptt.		Mrs. Archana Sinha @ Shahi, Sr. S.C.

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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 16.5.2018 is listed for hearing
for the first time today before the Court.

Heard learned counsel for the petitioner and learned
counsel for the respondents.

Petitioner has prayed for the following relief/s:

“For issuance of direction to the Respondents to
extend the time for furnishing online Income Tax



return in the Bihar which was expired on 31-03-2018 for the Financial Year-2016-17.”

The petition in its present form is not maintainable, apart from it being deficient of particular materials. However, Tax Payers of Bihar faces ‘unnatural inconvenience’ in not filing income-tax returns within the stipulated period remains unexplained. The petition appears to be espousing private cause instead of public cause.

In D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653, the Hon’ble Apex Court in paragraphs 34 to 39 observed 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, for the aforesaid reasons, the petition is dismissed.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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