

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15460 of 2018

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Arun Kumar Son of Late Ram Lakhan Sharma, Resident of 5/6, North Shri Krishnapuri, P.S. Shri Krishnapuri, Patna- 800013.

... .. Petitioner

Versus

1. The Union Of India through the Home Secretary, Government of India, North Bihar, New Delhi-110001.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna- 800015
3. The Principal Secretary, Department of Home, Government of Bihar, Old Secretariat, Patna- 800015.
4. Shri Amir Subhani Son of Late Mumtaz Ahmad, Principal Secretary, Department of Home, Government of Bihar, Old Secretariat, Patna- 800015.
5. The Director General of Police, Bihar, Old Secretariat, Patna- 800015.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Arun Kumar In Person
For the Respondents	:	Mr. P.N. Sharma, AC to AG
For the Union of India	:	Mr. Rajesh Kr. Verma, ASG

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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 petitioner has prayed for issuance of a writ of mandamus or any other appropriate writ/order/direction commanding the Respondents to deport illegally residing about a crore of Banglaeshi Muslim Nationals in the State of Bihar in compliance with various orders/directions contained in Annexures '1', '2' & '3' issued by the Government of India as well as for appropriate action against officers responsible for willfully defying the orders/directions of Government of India.



Having heard the petitioner in person, who is a practicing Advocate of this Court, we find the present petition to be totally misconceived and devoid of merit and not in public interest. On what basis petitioner can contend any infraction of provisions of law, in respect of Bangladeshi Muslim Migrants, is not borne out from the record.

We observe that the petitioner ought to have examined the matter in the light of law laid down by Apex Court in the case of ***D.N. Jeevaraj Vs. Chief Secretary, Government of Karnataka and others (2016) 2 SCC 653*** which reads 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.](#) to this effect as follows:

“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 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 organization 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* that:

“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.

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 recognized 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 in the following words:

“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.”

39. It is not necessary for us to definitively pronounce on the contention of learned counsel for Sadananda Gowda and Jeevaraj that the litigation initiated by Nagalaxmi Bai was not a public interest litigation or that no mandamus ought to have been issued by the High Court since no demand was made nor was there any refusal to meet that demand. But we do find it necessary to reaffirm the law should a litigant be asked to avail of remedies that are not within the purview of public interest litigation.”



Save and except for sending one written communication and that too, to the Hon'ble Prime Minister of the country, he has not carried out any basic research work, verifying the facts, or approached any authority before ventilating the grievance so raised in terms of the instant petition.

As such, we dismiss the present petition.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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