

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3823 of 2020

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Arun Kumar Son of Late Saryu Prasad Resident of Village-Jhikatiya Kala,
P.O. Maigra, P.S. Imamganj, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Panchayati Raj, Government of Bihar, Patna.
4. Additional Director General, Economic Offence Unit, Bihar Patna.
5. The Commissioner, Magadh Division, Gaya
6. The District Magistrate-Cum-District Officer, Gaya.
7. The District Panchayati Raj Officer, Gaya.
8. The Sub. Divisional Officer, Sherghari, Gaya.
9. The Circle Officer, Imamganj, Gaya.
10. The Block Development Officer, Imamganj, Gaya.
11. The Junior Engineer, Imamganj, Gaya
12. The Panchayat Secretary, Panchayat Jhikatiya Kala, P.O. Maigra, P.S. Imamganj, District Gaya
13. The Panchayat Supervisor, Panchayat Jhakatiya Kala, P.O. Maigra, P.S. Imamganj, District Gaya
14. The Mukhiya, Panchayat Jhikatiya Kala, P.O. Maigra P.S. Imamganj, District Gaya
15. The Ward Member-Cum-Chairman, Ward No. 3, Jhikatiya Kala, Panchayat Kala, P.O. Maigra, P.S. Imamganj, District Gaya
16. The Ward Secretary, Ward No. 3, Jhikatiya Kala Panchayat, P.O. Maigra, P.S. Imamganj, District Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Birendra Kumar Singh, Adv.
For the Respondent/s	:	Mr. Manish Kumar, AC to AAG-6
For the E.O.U.	:	Mr. V.N.P.Sinha, Sr. Adv.
		Ms. Soni Shrivastava, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 19-02-2020 Petitioner has prayed for the following relief:



“(i) For issuance of direction to Economic Offence Unit, Patna to investigate the financial irregularities in Ward No. 3, Panchayat Jhikatiya Kala, Imamganj, Gaya Fund Nal Jal Yojana.

(ii) For issuance of direction to Economic Offence Unit, Patna to investigate the Account No. 72280100121976, Ward No. 3, Panchayat Jhikatiya Kala, Nal- Jal Yojana to transfer money other account.

(iii) For issuance of direction to Economic Offence Unit, Patna to investigate account of Rohit Kumar, Proprietor of Soni Enterprises, Money of Nal-Jal Yojana transfer to Soni Enterprises and Soni Enterprises transfer to other illegal account.

(iv) For issuance of direction to Economic Offence Unit, Patna to recover the illegal money transfer to other account of Nal Jal Yojana, Ward No. 3, Gram Panchayat Jhikatiya Kala, P.O.- Maigra, Block-Imamganj, Gaya.

(v) For issuance of any other appropriate writ, order or direction in which Your Lordships may deem fit and proper in the facts and circumstances of the case.”

We find the averments made in the present petition with regard to alleged illegalities perpetuated in the implementation of the Nal-Jal Yojana in Ward No. 3 of Gram Panchayat- Jhikatiya Kala, P.O- Maigra, Block- Imamganj,



District- Gaya, to be absolutely vague and unspecific.

Petitioner claims himself to be a public spirited person but what are his credentials in the work as a social worker, are embedded only in his mind and not reflected in any of the pleadings made in the petition. Save and except, for making an averment that petitioner is a social worker, there is nothing, which can be inferred from the present petition, with regard to his such social work or activity in the field of rendering services to the society and more specifically ensuring supply of pure drinking water to the general public.

The Apex Court, in the case of **D. N. JEEVARAJ V. State of Karnataka (2016) 2 SCC 653**, 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.”

Finding the Court not to be in favour with the averments made across the bar, at this stage, learned counsel for



the petitioner submits that petitioner shall be content if petitioner is allowed to approach respondent no. 3 venting out the grievances.

Well, none can have any objection with regard to the same.

Though, Ms. Soni Shrivastava and Mr. Manish Kumar state that the present petition is fully motivated and mala fide for the petitioner's complaints stood examined at a particular level and on spot verification found to be false.

Be that as it may, as prayed for, we dispose of the present petition reserving liberty to the petitioner to approach the respondent no. 6, namely, the District Magistrate-cum-District Officer, Gaya.

We hope that as and when any such request is received, the same shall be dealt with in accordance with law and with reasonable dispatch.

With the aforesaid observation, present petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

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