

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2501 of 2020

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Sanjay Singh Son of Sri Baidya Nath Singh, R/o Village/Mohalla-Kadamkuan, Bara Phatak, South of Buddha Murti, P.S. Kadamkuan, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner, Patna Division, Patna.
3. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Principal Secretary, Department of Road Construction, Government of Bihar, Patna.
5. The Secretary, Department of Environment, Forest and Climate Change, Government of Bihar, Patna.
6. The District Magistrate-Cum-Collector, Patna.
7. The Managing Director, Bihar State Urban Infrastructure Development Corporation, Patna.
8. The Commissioner, Patna Municipal Corporation, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kundan Kumar Singh
For the Respondent/s	:	Mr.Lalit Kishore (Ag)
For the PMC	:	Mr. Prasoon Sinha, Adv.

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

(Per: HONOURABLE THE CHIEF JUSTICE)

2 04-02-2020 Petitioner has prayed for the following relief:

“For issuance of appropriate orders and directions commanding the respondent authorities, particularly, respondent no. 1,2,3 and 5 to fully implement the office order No. 974(E) dated 26.07.2019 Memo No. 974(E) dated 26.07.2019 issued by the Principal Secretary, Department of Environment, Forest and Climate Change, Government of Bihar, whereby and



whereunder the department after due deliberation took a conscious decision and formulated guidelines for maintaining greenery in town along with development work, but the Government within few months amended clause 4.1 of the said officer order vide office order under Memo No. 1552(E) dated 30.10.2019 and this way gave green signal for cutting of trees without making appropriate changes in those projects.

And, for issuance of appropriate order or orders to set aside the office order under memo no. 1552(E) dated 30.10.2019 issued by the Principal Secretary, Department of Environment, Forest and Climate Change, Government of Bihar, whereby and whereunder under the department arbitrarily amended the Clause 4.1 of the earlier officer order dated 26.07.2019 and thereby paved the way for uncontrolled cutting/feeling of old green trees in the name of construction/widening of roads which is apart from being arbitrary, also illogical, against the State's Policy to maintain greenery in urban locality and also against the spirit of the order of the Hon'ble Court in CWJC No. 8930 of 2019."

Not finding the Court to be in favour, learned counsel for the petitioner contends that petitioner shall be content if a direction is issued to consider and decide the petitioner's request, which the petitioner shall be making within a period of two weeks, with a further direction to the authorities to consider and decide the same expeditiously and preferably within a



period of four weeks.

The law is now well settled 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.”

In view of the prayer made by learned counsel for the petitioner, present petition is disposed of with the following



mutually agreed terms:

(a) Petitioner shall approach the authorities concerned by way of making request highlighting the grievances raised in the present petition as also other environmental issues;

(b) Learned counsel for the State states that upon receipt of such request, if any, the same shall be dealt with in accordance with law, expeditiously with reasonable dispatch.

(c) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law.

We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch within a period of two months from the date of receipt thereof.

It is clarified that we have not expressed any opinion on the merits of the case.

The petition stands disposed of in the aforesaid terms.

(Sanjay Karol, CJ)

(Mohit Kumar Shah, J)

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