

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.626 of 2020

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Banwari Lal Dailaniya Son of Late Prabhu Dayal Dalaniya Resident of
Manaskamnanath Chowk, K.P. Lal Road, P.S. Nathnagar, District Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of Health and Family Welfare, Government of Bihar, Patna.
2. The Directorate of Indigenous Medicine, Department of Health, Government of Bihar, Patna through its Director.
3. The Union of India through the Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi.
4. The Director, Department of Ayurveda, Yoga, Naturopathy, Unani, Siddha and Homeopathy, Ministry of Health and Family Welfare, Government of India, New Delhi.
5. The Central Council of Indian Medicine, 61-65, Institutional Area, Janakpuri, New Delhi- 110058, through its Secretary.
6. The Divisional Commissioner, Bhagalpur.
7. The District Magistrate-cum-Collector, Bhagalpur.
8. Sri Yatindra Narayan Ashtang, Government Ayurvedic Collage and Hospital, Champa Nagar, Bhagalpur through its Principal.
9. The Additional Commissioner, Department of Health and Family Welfare, Government of Bihar, Patna.
10. Deputy Secretary, Department of Health, Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr.Kulanand Jha, Advocate
For the Respondents	:	Mr.S.D. Yadav, AAG9
For the Union of India	:	Mr. Kanak Verma, CGC

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 13-01-2020 Petitioner has prayed for the following reliefs:-

“(A) A writ in the nature of mandamus commanding the respondents to take decisions immediately for resuming the B.A.M.S. Course in Sri Yatindra Narayan Ashtang Government Ayurvedic College and Hospital, Champa Nagar,



Bhagalpur following its closure in the year 2004 due to poor state of infrastructure and other facilities.

(B) For a writ, order, or direction in the nature of mandamus commanding the respondents to provide the necessary facilities for resuming the teaching facilities for the aspiring Students and running the Ayurvedic Hospitals smoothly in Sri Yatindra Narayan Ashtang Government Ayurvedic College and Hospital, Champa Nagar, Bhagalpur.

(C) For any other appropriate writ/writs, order/orders, direction/directions which may be fit in the facts and and circumstances of the cases.”

Save and except for making bald averments unsubstantiated by any fact, the present petition stands filed, in public interest, also to seek enforcement of the order dated 18.05.2011 passed in CWJC No. 19440 of 2010 (**Surendra Kumar Jain & Ors. Vs. The State of Bihar & others**).

We are of the considered view that the present petition is totally misconceived in law. The petitioner has not approached the authorities before filing the present petition.

The law with regard to public interest litigation is settled and clear in **D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653**, wherein the Hon'ble Apex Court in paragraphs 34 to 38 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 we dismiss the writ petition reserving liberty to the petitioner to initiate appropriate proceedings, if so desired, and in accordance with law.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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