

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5323 of 2021

1. Jitendra Kumar Upadhyay S/o Kumar Upadhyay Resident of village- Sisai, P.o. and P.s.- Barauli, Dist.- Gopalganj, Bihar-841405
2. Vijesh Kumar Manjhi S/o Manttu Manjhi resident of Sisai, P.o. and P.s.- Barauli, Dist.- Gopalganj, Bihar-841405
3. Kanti Devi W/o Bharat Pd. Yadav resident of village- Korihata, P.s.- Barauli, Dist.- Gopalganj
4. Saroj Devi W/o Raghav Singh resident of village- Mahamadpur, Nilami, P.s.- Barauli, Dist.- Gopalganj
5. Rabindra Prasad S/o Bhairo Sah resident of village- Madhopur, P.o.- Madhopur, P.s.- Barauli, Dist.- Gopalganj, Bihar- 841413
6. Deepak Kumar Legal Heirs of Jitendra Prasad deceased S/o Santosh Prasad, resident of village and Post- Madhopur, P.s.- Barauli, Dist.- Gopalganj,
7. Punita Devi W/o Shashi Bhushan Upadhyay resident of village- Sisai, Ps.- Barauli, Dist.- Gopalganj
8. Urmila Devi W/o Rabindra Prasad resident of village- Madhopur, P.o.- Madhopur, P.s.- Barauli, Dist.- Gopalganj
9. Ram Pal yadav S/o Banke Prasad Yadav resident of village- Jamo Bazar, P.s.- Goraya Kothi, Dist.- Siwan
10. Binod Sah S/o Shivjee Sah Bhawan no. 22(1), Mathurapur, P.o.- Belkhara, P.s.- Barauli, Dist.- Gopalganj
11. Bashishtha Prasad Yadav S/o Fagu Yadav resident of village- Kahla, Bakhraur Panchpatia, P.s.- Barauli, Dist.- Gopalganj
12. Dhrub Dev Rai S/o Yogendra Rawat Resident of village- Sareya Pahar, Barhima, P.s.- Barauli, Dist.- Gopalganj
13. Indu Devi W/o Manoj Das resident of village- Sadaua, P.s.- Barauli, Dist.- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Ministry of Finance, Government of Bihar, Patna
3. The Police Commissioner, Home Department, government of Bihar, Patna
4. The Registrar, Co-operative Society, Bihar, Patna
5. The District Officer, Gopalganj
6. The District Officer, Siwan
7. The District Officer, Chhapra
8. The Superintendent of Police, Gopalganj
9. The Superintendent of Police, Chhapra
10. The Superintendent of Police, Siwan



11. The Chief Executive Office, Mr. Apurva Kanth, Navjeevan Thrift and Credit self supporting Co-operative Society Ltd., 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- patna, Bihar
12. The Chairman Mr. Brajesh Kumar Datta, Navjeevan Co-operative Ltd., address- 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- Patna, Bihar
13. Mr. Arun Kumar Member of Board of Director, Navjeevan Co-operative Ltd., address- 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- Patna, Bihar
14. Mr. Ranjeet Kumar Rai Member of Navjeevan Co-operative Ltd., address- 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- Patna, Bihar
15. Smt. Nidhi Kumari Member of Navjeevan Co-operative Ltd., address- 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- Patna, Bihar
16. Mr. Ravindra Rai member of Navjeevan Co-operative Ltd., address- 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- Patna, Bihar
17. Mr. Dinesh Thakur Member of Navjeevan Co-operative Ltd., address- 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- Patna, Bihar
18. Smt. Nashima Bibi Member of Navjeevan Co-operative Ltd., address- 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- Patna, Bihar
19. Smt. Fulmatii Devi Member of Board of Director Navjeevan Thrift and Credit Self Supporting Co-operative Society Ltd., address- 502, Hariom Commercial Complex, New Dak Bangla Road, P.s.- Gandhi Maidan, Dist.- Patna, Bihar

... .. Respondent/s

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

Appearance :

For the Petitioner/s : Mr.Maheshwar Prasad, Adv
For the Respondent/s : Mr. Ajay Kumar Rastogi AAG-10

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 05-07-2021

Heard learned counsel for the parties.



Petitioners have prayed for the following relief(s):-

“(i) That this writ application is for issuance of a writ of mandamus, or any other appropriate writ/writs/ or order/orders or direction/directions on commanding the State authorities respondents/board of directors to refund the maturity amount, which was deposited in account of Navjeevan thrift and credit self supporting co-operative Ltd. Registered under Bihar self supporting Co-operative Ltd, registered under Bihar Self supporting Co-operative Society Act, 1996 under Bihar Co-operative Society Act, 2-1997 vide registration no. BR/00/00/00/oth/02/2016.

(ii) That to issue direction to the State respondents including the state police to take up investigation of the criminality of the matter in accordance with law under the supervision of the Hon’ble Court and take all action including arrest of the Board of directors of the respondent no. 11 to 19.

(iii) To issue direction to compensate the loss and damage suffered by the countless deposit including the petitioners for the act, action and omission allowed to be committed by the said Navjeevan thrift and credit self supporting co-operating society act to mobilize the huge public deposit by defrauding the depositors by sudden closure of the business and activity of the said society.

(iv) To issue direction that the appointment of special officer/administration on the affairs so prospective of the said society and to appoint chartered accountant to make evolution of all such properties held in name of each board of directors, derived from the said deposit held in the name of any others under section-5, 6, 7(1)& 8 of the Bihar Protection of interest of Depositors (in financial establishment) Act, 2002.”

After the matter was heard for some time, learned counsel for the petitioners, under instructions, states that petitioners shall be content if a direction is issued to the authority concerned to consider and decide the representation



which the petitioners shall be filing within a period of four weeks from today for redressal of the grievance(s).

Learned counsel for the respondents states that if such a representation is filed by the petitioners, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of three months from the date of its filing along with a copy of this order.

Statement accepted and taken on record.

The Hon'ble Supreme Court in ***D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653***, 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 parties 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, petition stands disposed of in the following terms:-

(a) Petitioners shall approach the authority concerned within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The authority concerned shall consider and dispose it of expeditiously by a reasoned and speaking order preferably within a period of three months from the date of its filing along with a copy of this order;

(c) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(d) Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(e) We are hopeful that as and when petitioners take



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;

(f) Liberty reserved to the petitioners to approach the Court, if the need so rises subsequently on the same and subsequent cause of action;

(g) We have not expressed any opinion on merits. All issues are left open;

(h) The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

