

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7335 of 2021

=====

Balram Chaudhari, Son of Late Madan Gopal, resident of Little Flower School, Guzari Bazar Manas Path, P.S- Khazakala, Patna City, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Patna.
3. The Principal Secretary, Education Department, Government of Bihar, Patna.
4. The District Magistrate, Patna.
5. The Director, Primary Education Department, Government of Bihar, Patna.
6. The District Education Officer, Patna.
7. The District Programme Officer, Establishment, Patna.
8. The District Programme Officer, (S.S), Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Alok, Advocate, Mr. Jitendra Kumar Rai, Advocate
For the Respondent/s	:	Mr. Gerejesh Kumar, Advocate Ms. Shilpa Singh (GA-12)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 13-07-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

“(I) To hold and declare that the children of 6-14 years have the right of getting facilities of Primary/Elementary neighborhood schools, as granted to them under rules and



laws specifically the Right of Children to Free and Compulsory Education Act and the Bihar State Free and Compulsory Education of Children Rules which are in accordance with the Article 21A of the Constitution of India.

(ii) To set aside the Notification No. 6/bee/9-53/2026 dated 09.02.2017, and also other consequential orders, whereby the respondent authorities, in complete violation of the Right of Children to Free and Compulsory Education Act, 2009 and the Bihar State Free and Compulsory Education of Children Rules, 2011, about about 1773 New Primary Schools (out of 21000 new schools) have been decided to be merged in the existing Primary Schools or middle Schools existing in the 1 KM area and the respondent authorities be directed to stop shifting of the elementary schools from the neighborhood locality of the children as this action of the respondents are also in complete disregard of the Neighborhood School provisions of the aforesaid acts.

(iii) To direct the respondents not to merge primary schools, by shifting to other schools premises which are running continuously since many decades (in the neighborhood of the targeted children between the age of 6 to



14 years,) as about 40 lakhs kids have decreased from the government schools of the state of Bihar as evident from one news published on 02.02.2021 in the local Hindi daily *Hindustan* (Annexure-8).

(iv) To direct the respondents particularly not to merge by shifting Kanya Urdu Prathimic Vidalaya Pakki Goriya Anchal Choak, Patna City which has been functioning since 1950 but is now being shifted to Madhya Vidayaliy, Mahila Charkha Samati, Mogalpura.

(v) To direct the respondents to safeguard the land of the schools from large scale encroachments as reported on 01.02.2021 in the local Hindi daily *Hindustan* (Annexure-9) and also to provide adequate land, building and other infrastructure to the elementary schools established in the neighbourhood so that the targeted children between the age of 6 to 14 years and thereafter such shifted elementary schools be again be established (re-shifted) in their original places/targeted habitation, so that children may get the benefits, as enshrined in the Article 21A of the Constitution of India.

(vi) To direct the respondent authorities to provide adequate fund for the construction and repair of existing buildings of the



Primary/Elementary Schools.

(vii) To direct the respondents to run the classes of the elementary schools in the day time so as to safeguard the children from extreme temperature and other difficulties posed by weather and environment.”

After the matter was heard for some time, learned counsel for the petitioner, under instructions, states that petitioner shall be content if a direction is issued to the authority concerned to consider and decide the representation which the petitioner 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 petitioner, 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) Petitioner 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 petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(e) 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;

(f) Liberty reserved to the petitioner 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)

veena/rajiv-

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

