

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9881 of 2021

Mr. Pankaj Kumar Baranwal, S/o Ramjee Prasad, Resident of Village-Rama Bhawan, Police Station-Civil Lines Gaya, Dist-Gaya, Bihar.

... .. Petitioner/s

Versus

1. Department of Education, State of Bihar through its Principal Secretary, New Secretariat, Vikas Bhawan, Bailey Road, Patna-800015.
2. Director of Primary Education, Department of Education, New Secretariat, Vikas Bhawan, Bailey Road, Patna-800015.
3. Department of School Education and Literacy, Ministry of Human Resource Development, New Secretariat, Vikas Bhawan, Bailey Road, Patna-800015.
4. Deputy Director of Public Institution, New Secretariat, Vikas Bhawan, Bailey Road, Patna-800015.
5. The District Magistrate, Araria.
6. The District Magistrate, Arwal.
7. The District Magistrate, Buxar.
8. The District Magistrate, Kaimur.
9. The District Magistrate, Katihar.
10. The District Magistrate, Kishanganj.
11. The District Magistrate, Patna.
12. The District Magistrate, Samastipur.
13. The District Magistrate, Sheohar.
14. The District Magistrate, Sitamarhi.
15. The District Magistrate, Aurangabad.
16. The District Magistrate, Muzaffarpur.
17. The District Programme Officer Primary and Elementary Education, Bihar.
18. The Bihar Education Project Council, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar Singh, Mr. Akash Keshav, Advocates
For the Respondent/s	:	Ms. Shilpa Singh, GA 12 Mr. Girijish Kumar, Advocate

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 : 20-07-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) For issuance of appropriate writ or Mandamus Or any other appropriate writ(s) or order(s) or direction(s) commanding the respondents to provide and ensure basic infrastructure and build the poor condition of the government / government aided schools at several district, in the state as mentioned in paragraphs 7 and 8, in compliance with the provisions under Section 8(d) of the Right of Children to Free and Compulsory Education Act. 2009 (hereinafter referred to as "RTE Act. 2009-) and also under Article 21(A) of the Constitution of India.

11.For issuance of appropriate writ of Mandamus or any other or appropriate writ(s) or order(s) or direction(s) commanding the respondents to ensure and provide basic infrastructure facilities like toilet including separate toilet for girls with running water, portable and clean drinking water, sufficient number of class rooms, school boundary wall or fencing as per Section 19 of the RTE Act, 2009 in the district of Araria, Arwal, Buxar, Kaimur, Katihar, Kishanganj, Patna, Samastipur, Sheohar, Sitamarhi, Aurangabad, Muzaffarpur and other districts with poor basic school infrastructure so that school children can pursue their studies in a clean, healthy and hygienic



environment.

(iii) For issuance of appropriate writ or Mandamus or any other appropriate writ(s) or order(s) or direction(s) commanding the respondents to ensure availability of kitchen within the school premises as mandated under Section 8(d) of the RTE Act, 2009 and Sections 5(1) and 5(2) of the National Food Security Act, 2013 so that school students should get hot cooked food as mid-day meal in the schools as mentioned in paragraphs 7 and 8 and also to those schools which are in similar conditions, across the State.

IV. For issuance of appropriate writ of Mandamus or any other or appropriate writ(s) or order(s) or directions commanding the Respondents to appoint sufficient number of teachers so as to ensure adequate pupil-teacher ratio (as per Section 25 of the RTE Act, 2009) timely distribution of books under Rule 5(1) of the Bihar State Free And Compulsory Education Of Children Rules, 2011, availability of library under Section 19 of the RTE Act, 2009 barrier-free access u/s 6 of the RTI Act, 2009 and establishment of the new, schools u/s 6 of the RTE Act. 2009 to the concerned districts as mentioned in Paragraph numbers 7 and 8.

V. For issuance of appropriate writ of Mandamus or any other or appropriate writ(s) or order(s) or direction(s) commanding the Respondents to ensure proper functioning (where it is defunct) establishment (where it is unavailable) of the School



Management Committee in the schools at several districts as mentioned in paragraphs 7 and 8, as mandated under section 21 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "RTE Act, 2009).

VI. For issuance of appropriate writ of Mandamus or any other or appropriate writ(s) or order(s) or direction(s) commanding the Respondents to implement the guidelines laid down by the Hon'ble Supreme Court in Environment anti Consumer Protection Foundation vs. Delhi Admin and Ors. WP(c) no. 631 of 2004 in the best interest of the children studying in the government/ government aided schools in the State of Bihar.

AND/OR

VII. Any other relief that this Hon'ble Court deems fit in the best interest of the school going students.

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.”

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.

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 arises subsequently on the same and subsequent cause of action;

(g) Liberty also reserved to the petitioner to make a mention for listing of the petition on priority basis. As and when any such mention is made, Registry shall take steps for listing the petition at the earliest.

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

(i) 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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2021
Transmission Date	NA

