

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11669 of 2021**

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Satish Kumar Sharma S/o Late Sri Vinay Sharma, Resident of village and P.o.- Saday Bigha, P.s.- Barahiya, District- Lakhisarai, Bihar-811302, present address- Flat No. 606, Tara Tower, Shastri Nagar, Patna-800023

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Higher Education Department, Government of Bihar, Patna-800001
2. The Honble Chancellor of Universities, Bihar through the Secretary, Governors Secretariat, Raj Bhawan, Patna-800022
3. The Principal Secretary, Education Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna-800001
4. The Aryabhatta Knowledge University, Mithapur, Patna through the Vice Chancellor, Aryabhatta Knowledge University, Patna-800001
5. The Vice Chancellor, Aryabhatta Knowledge University, Mithapur, Patna -800001
6. The Pro Vice Chancellor, Aryabhatta Knowledge University, Mithapur, Patna -800001
7. The Registrar, Aryabhatta Knowledge University, Mithapur, Patna -800001
8. The Registrar (In-charge) Aryabhatta Knowledge University, Mithapur, Patna -800001
9. The Principal Accountant General Bihar Mahalekhakar Bhawan, Veer Chand Patel Path, Patna-800001
10. Dr. Arun Kumar Agrawal S/o Late shri Rameshwer Agrawal Resident of Veena Kumj, R.K. Avenue path, Rajendra Nagar, Patna-800016, presently working on contract basis as Professor in Department of Neurosurgery, Patna Medical College and Hospital, Patna-800004 and former Vice Chancellor Aryabhatta Knowledge University, Patna-800001
11. Prof. Syed Mahammad Karim @ S.M. Karim, S/o Late Sri Hafiz Karim, Road No. 8, Rajendra Nagar, patna-800016, posted as Pro Vice Chancellor, Aryabhatta Knowledge University, Patna and presently in the additional charge of the post of Vice Chancellor, Aryabhatta Knowledge University, Patna-800001
12. Shri Rajeev Ranjan S/o Late Sri K.P. Yadav, R/o Gokul Path, Patel Nagar, Patna-800023, posted as Controller of Examinations, presently in additional charge of Registrar, Aryabhatta Knowledge University, Patna-800001

... .. Respondent/s

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**Appearance :**

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|----------------------|---|---------------------------------------------------------------|
| For the Petitioner/s | : | Mr.Vijay Kumar Srivastva<br>Mr. Manoj Kumar, Singh, Advocates |
| For the Respondent/s | : | Mr.KUMAR PRIYA RANJA<br>Mr. PRIYANK DEEPAK<br>Mr. Raj Kamal,  |

Mr. RAJENDRA KUMAR GIRI, Advocates

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**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 : 02-08-2021**

Heard learned counsel for the parties.

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

“ A. For issuance of an appropriate writ in the nature of the mandamus or any other appropriate writ(s), order(s) or direction(s) to direct the Respondents No.2, the Hon’ble Chancellor of Universities. Bihar, to constitute a time bound Judicial enquiry committee or any other appropriate enquiry to look into all the prima-facie financial and administrative irregularities, misconduct and illegal decisions, taken by the then Vice-Chancellor, Aryabhatta Knowledge University, Patna. i.e., Dr. Arun Kumar Agrawal (Respondent No. 10) in connivance and in conspiracy with Prof Syed Mohammad Karim (S.M.Karim) and Shri Rajeev Ranjan, (Respondent Nos. 11 & 12). the Pro Vice-Chancellor and the Registrar(I/C), Aryabhatta Knowledge University, Patna, respectively, during the period from 31.03.2015 to 26.05.2016, and from 21.09.2017 to 20.09.2020 by the then Vice-Chancellor, Aryabhatta Knowledge University, Patna (i.e., Respondent No. 10, Dr. Arun Kumar Agrawal, Or, in the alternative, direct the Cabinet Vigilance to enquire / investigate into the large scale financial irregularities and misappropriation of Government funds and public money, causing huge loss to the public exchequer, which has been illegally pocketed by the above named authorities of the

Aryabhatta Knowledge University by their acts of favouritism/ nepotism, illegal acts and such activities of quid pro quo and acts of corruption;

And to take appropriate action on the basis of the outcomes of the enquiry after taking recovery of the all payments illegally taken from University due to the criminal acts of financial and administrative irregularities of the authorities of the University.

B. For issuance of an appropriate Writ in the nature of the mandamus or any other appropriate writ(s), order(s) or direction(s) to direct to the respondent no.2 to withdraw all the works, powers and functions of the respondent nos.11 and 12, while on the respective posts, during pendency of the instant writ petition and during the pendency of inquiry,

C. For issuance of an appropriate writ in the nature of the mandamus or any other appropriate writ(s), order(s) or direction(s) to direct to the respondent authorities concerned to make public the report of the "Fact Finding Committee" of Three- Vice Chancellors and and apprise as to why any action has not been taken on the findings of the report of the "Fact Finding Committee",

D. Any other relief or reliefs which may be deemed fit and proper by the Hon'ble Court in the facts and circumstances of the case."

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 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/-

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| <b>AFR/NAFR</b>          | NAFR       |
| <b>CAV DATE</b>          | NA         |
| <b>Uploading Date</b>    | 05.08.2021 |
| <b>Transmission Date</b> | NA         |