IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10636 of 2021

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C.A. Sanjay K. Jha Son of Late Dhirendra Jha Resident of 208, Jagat Trade Centre, Freser Road, Patna-800001, Bihar, President of Indian C.A. Association (ICAA).

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State of Bihar through the Principal Secretary, Raj Bhawan, Patna, Bihar-800022.
3. The State of Bihar through Principal Secretary, Department of Education, Patna.
4. The Vice Chancellor, Jaiprakash University, Chapra, Bihar.
5. The Vice Chancellor, L.N. Mithila University, Bihar
6. The Vice Chancellor, K.S.D.S. University, Darbhanga, Bihar.
7. The Vice Chancellor, BR Ambedkar University Mauzaffarpur, Bihar,
8. The Vice Chancellor, Veer Kuwar Singh University, Ara Bhojpur, Bihar,.
9. The Vice Chancellor, T.N.B. University, Bhagalpur, Bihar.
10. The Vice Chancellor, Munger University, Bihar.
11. The Vice Chancellor, B.N.Mandal University, Madhepura, Bihar.
12. The Vice Chancellor, Purnea University, Purnea, Bihar.
13. The Vice Chancellor, Patliputra University, Patna, Bihar.
14. The Vice Chancellor, Magadh University, Bodh Gaya, Bihar,.
15. The Vice Chancellor, Aaryabhatt Knowledge University, Patna, Bihar.
16. The University Grant Commission (U.G.C.), Bahadur Shah Zafar, Marg, New Delhi,110002 through its Secretary.
17. The Union of India through its Ministry of Human Recourse and Development (MHRD) Government of India, Shastri Bhawan, New Delhi thropugh its Secretary.
18. The Union of India through the Secretary, (Comptroller and Auditor General of India), Pocket-9, Pandit Deen Dayal Upadhyay Marg, Near Mata Sundari Railway College, New Delhi-110002.
19. The A.G. Bihar through the Secretary, Mahalekhakar Bhawan, Patna.
20. The Central Vigilance Commission (CVC), Satarkta Bhawan, G.P.O. Complex, Block AINA P.O. Sarohini Nagar, New Delhi-110023 through its Secretary.

... ... Respondent/s

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Appearance :

For the Petitioner/s : M/s Sugandha Prasad
Daya Shanker Prasad, Advocates

For the Respondent/s : Mr. Dr. K. N. Singh, ASG
Mr. Ajay Kumar Ratogi, AAG 10
Mr. Shashi Shekhar Tiwari, AC to 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)
(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 10-08-2021

Heard learned counsel for the parties.

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

> "(a) Commanding the respondent authorities as to why a high powered committee be not constituted, with an expertise knowledge in the field of accountancy and financial management to hold proof probe in the matter of mass irregularities, lack of proper information, mismanagement and direction of an allocated fund/ UGC grant, misappropriation of allocated fund, sponsored by the Central Government under various scheme, Sans Non compliance of Annual Accounts as directed by the UGC, prescribed rules, regulation and laws. were found not maintained as envisaged u/s. 52(1), 53(1). 47(1) of the Bihar Universities Act, 1976.
> i. ANNUAL ACCOUNTS as directed by UGC & the prescribed rules, regulations and laws were found not maintained.
> ii. The Balance Sheet (along with detailed situation wise and position wise Fixed Asset Register), Income and Expenditure Account (pursuant to ICDS as notified by Central Government) of Universities and Colleges as per Accounting standards, Guidance Note, rules prescribed by the Institute of Chartered Accountants of India (ICAI) were not found to be prepared.
> iii. Compliance of Income Tax Laws along with other applicable laws to the Universities and Colleges to ensure Financial Benefit accruing to Colleges / Universities is not properly claimed from Tax Authorities. Also, there is huge loss to the government on account of non refund of TDS as earn on Interest on FD. A loss of Rs. 12 Cr. was reported earlier in J.P. University which is shocking and needs to be complied with in future.
> iv. There were no proper register of the Salary, Pension, allowances and advance paid or to be paid by the college & universities maintained in electronic or other prescribed forms.

v. The Budget & Budgetary system of the colleges and universities as required in section 47 of the Bihar Universities Act, 1976 was found to be non functional.
vi. The fee Collection Register, Daily Collection Register, Receipts issued to students etc. were not found to be properly maintained.
Vii. There is lack of internal check/internal control which leads to misappropriation / fraud etc. in J.P. University, C & AG has report Rs.3.21 crores as excess salary paid.
Viii. The University has not complied with terms/form of UGC and all utilization certificates are pending.
With non submission of utilization certificate is a high time of the financial mismanagement is being submitted as per the applicability of the account standard issued by the institute of Charted Account of India (ICAI).

Vis-a-vis the said discrepancies in the maintenance of the Account and financial mismanagement were detected during the course of conducting the Audit of the "Jai Prakash University" and L.N. Mithila University, in as much as most shockingly, it is being observed in the said audit report contained in Annexure-I to this petition, may ipso facto reveal that since the very inception of the "J.P. University there has been ….." flagrant violation of the Bihar Universities Act, 1976 well reflected in the said report, sans non auditing of J.P. University by any agency, (either internal or external agency of the controlling financial agency either by A.G. Bihar or C.A.G.) is being conducted till date as reported, which have become a cause of fraud, siphoning off tones of money, with misappropriation and misutilization of fund received by way of, under the aegis of the Central Government scheme. UGC grant, donation, contribution, other source of revenue etc, requires to be arrested forth-with, to ensure transparency and financial discipline in colleges / universities, so that as to stream line the whole economy structure of the state. sponsored fund earmarked with the allocation of various fund in running the educational institution (College/ Universities) in Bihar may not be subjected to bungling of public money at the behest of the fraudsters / racketeers, well grooved in siphoning of tones of money with falsification of accounts recklessly, with no auditing report submitted to the state government or to the UGC. or the ministry of Human resource development, Government of India, till date by the V.C. of the J.P. Universities.

Vis-a-vis no such diligent steps taken by the V.C. of the J.P. University to stream line the accounting, auditing, taxation, financial management and statutory compliance etc. despite the submission of the audit report with remedial measures as suggested in the said report contained in Annexure-I to this petition, have cut no ice, obviously the concerned authorities of the Universities' Colleges, appears to be absolutely, unconcerned, and are out to usurp and mint money of the college./ universities by all such dubious and

deceitful means leaving the education institution in lurch.
b) Commanding the respondent authorities as to why, the erring official/ staffers of the college/ universities well grooved in defalcation and embezzlement of the allocated fund received by way of UGC grant and other resources with non submission of the utilization certificate to the concern authorities during the period 2008-2011-2012, with no transparency in the proper maintenance of account in most of the colleges of Bihar requires to be probed by the Apex Vigilance Agency of the Country like CBI, CVC, State Vigilance Bureau, SIT as reflected in the said audit report contained in Annexure-1 and also as per reporting made in the print media annexed vide Annexure-2 to this petition.
Vis-a-vis as to why the concerned officials/ scam asters be not booked and made accountable for causing huge loss to the state exchequer with the commission of gross irregularities, and bungling with misappropriation and misutilization of the government fund / grant etc. in view of the facts and circumstances of the case.
c) Commanding the respondent authorities as to why the concerned authority be not made accountable and taken to task for their abysmal failure to take any such stringent measure as against the erring officials / scamesters, with non registration of FIR, which had led to misappropriation of fund, siphoning of tones of money. with all such dubious measure of fraud and deceit in J P University, with the payment of 3.21 emits as excess salary paid account to C and A.G. report in as much as there has been huge loss to the government on account of non refund of TDS earned on interest on FD, and thus, a loss of Rs. 12 crores was reported in J P. University, requires to be taken to task in accordance with law tor causing huge loss to the state exchequer of public money.

Vis-a-vis action taken report (ATR) may be called for in this regard."

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	14.08.2021
Transmission Date	NA