

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12953 of 2021

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Shravan Kumar Singh, Son of Uma Shankar Singh, Resident of Ward no.-06,
Baruari, P.S.-Gaighat, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary General Administration Department Govt. of Bihar, Patna.
2. The Principal Secretary Panchayati Raj Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
4. The District Magistrate, Muzaffarpur.
5. The S.D.O., East, Muzaffarpur.
6. The District Panchayati Raj Officer, District-Muzaffarpur.
7. The Block Development Officer, Block-Gaighat, Muzaffarpur.
8. The Election Commissioner, State Election Commission, Bihar, Patna.
9. District Program Officer, Establishment, Education Department, Muzaffarpur.
10. The Block Education Officer, Gaighat Block, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Yugal Kishore, Advocate
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)

(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):-

“(i) For issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent no. 4 (District Magistrate) to make proper enquiry against respondent no. 7 as well as others authority for willing fully

disobeying the order passed by District Appellate Authority as well as State Appellate Authority of education department by which the respondent no. 7 willfully not complied the order passed by the authority and due to negative activities of respondent no. 7 appointment of teacher has not made till now and due to negligence of respondent no. 7 the bright carrier of the student came under cloud due to non available of teacher (Annex-1).

(ii) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the respondent no. 4 (District Magistrate) to make proper enquiry against respondent no. 7 as well as others authority embezzlement of government fund for entire block of Gaighat block under the scheme of Mukhya Mantri Satta Nishchaya Yojana like Nal-Jal Yajana, Pakki Gali- Nali Yojana, Lohiya Swachchha Bihar Yojana since year 2017 till 2018, by which respondent no. 7 has not check the government fund came for the purpose and in connivance of the contractor the respondent no. 7 and other authority has misused the government fund (Annex-1) and as such till now work has not completed till now and the respondent no. 7 has not act upon the representation given by the villagers and sit tight over such objection, which clearly shows that the respondent no. 7 is knowingly and willfully protecting the wrong doer and for doing such reason well known to the respondent no. 7.

(iii) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the respondent no. 4 (District Magistrate) to make proper enquiry regarding voter list of the village of Gaighat block and this respondent no. 7 has knowingly and willfully disturb the voter list of village of Gaighat block and such act has done by respondent no. 7 under the mussel and powerful political person and for doing the same there is no any reasonable explanation to the respondent no. 7.

(iv) For issuance of an appropriate writ in the nature of Mandamus commanding and directing the respondent no. 4 (District Magistrate) or any other higher authority to make proper enquiry regarding not compliance of the order of Panchayat Samiti and in this way the respondent no. 7 is violating the Panchayati Raj Act/rules and due to negative act of the respondent no. 7 no proper work has been done by the Committee.

(v) For issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent no. 4 (District Magistrate) or any other respondent to make proper enquiry regarding taking work from teacher of the school by way of using them in his office illegally and not releasing the teacher for teaching work and as such government project to educate boy/girl is hampering due to wrong act of the respondent no. 7 and this respondent no. 7 is utilizing the teacher for his official work while their attendance is being wrongly made in their respective school.

(vi) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the respondent no. 4 (District Magistrate) as well as respondent no. 8 not to employed this respondent no. 7 in any panchayat election or block election as there is every chance that this respondent no. 7 under political influence would not honestly complete the panchayat election or block election.

(vii) For issuance of an appropriate writ in the nature of mandamus, commanding and directing the respondent no. 4 (District Magistrate) to make proper enquiry regarding making payment of vehicle used in state election by which the respondent no. 7 has wrongly made payment to his near and dear person without properly maintain log book and verification of the registration of the vehicle used in election of 2020.

(viii) For issuance of any other writ/writs/ order/orders direction/directions for which the writ petitioner is legally found entitled on behalf of his community and poor villagers under 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* [*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 i.e. District Magistrate, Muzaffarpur 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 i.e. District Magistrate, Muzaffarpur 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)

veena/rajiv-

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