

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10349 of 2020

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Pankaj Kumar Singh, aged about 41 years, Male, S/o late Dharmnath Singh, R/o village - Chirand, P.S.- Doriganj, District - Saran.

..... Petitioner.

Versus

1. The State of Bihar through the Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Commissioner, Department of Mines and Geology, Government of Bihar, Patna.
4. The Director, Department of Mines and Geology, Government of Bihar, Patna.
5. The Director, Central Bureau of Investigation, New Delhi.
6. The Director General of Police, Bihar.
7. The Collector, Saran.
8. The Collector, Bhojpur.
9. The Collector, Patna.
10. The Collector, Vaishali.
11. The Superintendant of Police, Saran.
12. The Superintendant of Police, Bhojpur.
13. The Superintendant of Police, Patna.
14. The Superintendant of Police, Vaishali.
15. The Mines Inspector, District Mines Office, Saran.
16. The Mines Inspector, District Mines Office, Bhojpur.
17. The Mines Inspector, District Mines Office, Patna.
18. The Mines Inspector, District Mines Office, Vaishali.
19. M/s Broad Son Commodities Pvt. Ltd., 1/42, Azad Garh, Ground Floor, Kolkata 700040 (West Bengal), presently having local office at Himanshu Complex, Station Road, Koelwar, Ara (Bhojpur).

..... Respondents.

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Naraiyan, Sr. Advocate Mr. Bishwajeet Singh, Advocate Mr. Kundan Kumar Singh, Advocate
For the Respondent/s	:	Mr. Pawan Kumar, A.C. to A.G.



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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 22-06-2021

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

That this writ application is being filed in the nature of Public Interest Litigation for the issuance writ of MANDAMUS for direction to the Central Bureau Investigation to immediately initiate CBI investigation under monitoring of the Hon'ble court, in systematic loot, misappropriation, extortion and fraud played in collection of royalty and issuance of Transit Pass by licensees and officials of Bihar State Mining Corporation and Department of Mines and Geology, which is going on for the last 30 years till today within the knowledge of all concerned, and which has led to loss to state exchequer for not less than Rs. 20,000.00 crores (Rs. Twenty thousand crores).

AND, for the issuance of writ of MANDAMUS commanding the respondent authorities, particularly respondent no. 2, 3 and 4 to implement the "Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 " and ensure settlement of sand ghats and collection of royalty from boatmen either on extraction point or at deposit point and issue valid challan for the same against the present practice of collection in the name of royalty but no challan is being issued to them and the same can be verified on the spot and from the records.

AND, for the issuance of writ of MANDAMUS commanding the respondent authorities, particularly respondent no. 2 and 3 to allow settlement of Sand Ghats in the northern side of river Ganga and river Chaghra to intending persons to work as stockiest of yellow sand in order to regulate the said business as provided in rule 39 (1) and (2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 and prevent extortion and fraud in collection of royalty as yellow sand is being stocked and sold in market from these ghats for being transported to different parts of State and outside.



AND, for the issuance of writ of MANDAMUS commanding the respondent authorities particularly respondent no. 2 and 3 to ensure that once royalty is collected at extraction point and sand is transported to stock point thereafter the no further royalty should be collected on lifting and transporting from stock point and the same be allowed to move on transport challan as provided in rule 39 (1) and (2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019.

AND, for issuance of appropriate Order or Orders, Direction or Directions for which the petitioner may be found entitled to.

Petitioner herein invites attention of this Court to the alleged fraud and misappropriation in the collection of amounts of royalty, contrary to the mining policy. What is highlighted is the use of muscle power by the Mafia in extorting money from persons engaged in the activity of mining and transportation of sand from various Ghats within the State of Bihar, and more so in the Chapra-Sonepur area. In effect such practice is causing immense loss to the public exchequer.

If the allegations are correct, then obviously the issue is of vital public importance. But, however, we notice that the averments in the petition are not substantiated by any cogent material. Also, we notice that the petitioner, prior to filing of the instant petition, had approached the authorities way back in the year 2018, since when a new mining rules/policy stands framed.



The Hon'ble Supreme Court in *D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653*, paragraphs 34 to 39 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.”

In the aforesaid backdrop, we are of the considered view that it would be only appropriate that the petitioner first approaches the authorities inviting attention of the manner in which the mechanism in place is being subverted by the stakeholders, including the Government officers/officials.

At this stage, Shri Rajendra Naraian, learned Senior Advocate states that the petitioner shall approach Respondent No. 2, namely The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna within a period of two weeks by filing a representation, for redressal of the grievance(s).

Shri Pawan Kumar, learned Assistant Counsel to learned Advocate General, under instructions, states that any such representation received from the petitioner shall be dealt with and disposed of with promptitude, in accordance with law, preferably within a period of two 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 Respondent No. 2, namely The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna within a period of two weeks from today by filing a representation for redressal of the grievance(s);

(b) Respondent No. 2 namely The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna shall consider and dispose it of expeditiously and preferably within a period of two 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)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	22.06.2021
Transmission Date	

