

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4337 of 2021

Manaur Alam S/o Md. Islam R/o Block Road, P.O. - Narkatiyaganj, P.S. -
Shikarpur District- West Champaran.

... .. Petitioner/s

Versus

1. Union of India, through the Secretary, Department of Health and Family Welfare, New Delhi.
2. The Directorate General of Health Services (DGHS), Department of Health and Family Welfare, Government of India through Director General of Health Services.
3. The Board of Governors in Supersession of Medical Council of India through its Chairman, New Delhi.
4. The National Testing Agency through its Chairperson, West Block-1, Wing No. 6, 2nd Floor, R.K. Puram, New Delhi- 110066.
5. NITI Aayog (National Institute for Transforming India), Government of India through its Chairperson, South Block, Secretariat Building Raisina Hill, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Amit Pandey, Advocate
For the Respondent/s	:	Mr. Dr. K.N.Singh (ASG)
		Mr. Manoj Kumar Singh (CGC)
		Mr. Kumar Brijnandan (NMC)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

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

Date : 19-07-2021

Heard learned counsel for the parties.

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

“(i) For issuance of an order(s)/direction(s) or writ(s) in the nature of mandamus directing the respondents particularly the Union of India, the Medical Council of India and NITI Aayog to take decision on the issues raised in the representations dated 16.12.2019 which was



sent by the petitioner (Annexure-11) (series) pursuant to the order dated 03.12.2019 passed in C.W.J.C. No. 24034 of 2019 titled Manaur Alam Vs The Union of India & Ors.

(ii) For issuance of further order(s)/direction(s) or writ(s) in the nature of mandamus directing the respondents particularly the Central Government and NITI Aayog to devise schemes of financing studies of such meritorious candidates who despite higher ranks in NEET-UG are not able to take admission in private medical colleges only because the exorbitant fees being charged by such private medical colleges for taking admission in MBBS courses are beyond their paying capacity and means. And/or.

(iii) For issuance of an order(s)/direction(s) or writ(s) in the nature of mandamus directing the respondents no. 4-National Testing Agency to prepare the NEET (UG)-2020 All India Merit List as well as state wise merit list of the candidates who qualify NEET (UG)-2020 in such a manner that number of total candidates in the NEET (UG)- 2020 merit list must not comprise of more than twice or thrice the total number of available MBBS seats for the academic session 2020-21. And/or

(iv) For issuance of an order (s)/direction(s) or appropriate writ(s) for setting aside the MCI Notification dated 15.02.2012 amending “Regulations on Graduate Medical Education, 1997” by which all of a sudden and in an arbitrary manner qualifying criteria for MBBS admission through NEET-UG was changed from system of percentage to system of percentile as a result of which even such candidates who secure only 13% marks in NEET (UG) examination have been admitted in MBBS courses. And/or

(v) For issuance of further order(s)/direction(s) or writ(s) in the nature of mandamus directing the respondent no. 4-National Testing Agency to prepare All India Merit List as well as State wise merit list of the



candidates who qualify NEET (UG)-2020 as per the qualifying criteria prescribed in MCI Notification dated 21.12.2010 which provides that “In order to be eligible for admission to MBBS course for a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (fifty percent) marks in each paper of National Eligibility-cum-Entrance Test held for the said academic year, However, in respect of candidates belonging to Scheduled Caste, Scheduled Tribes and Other Backward Classes, the minimum percentage marks shall be 40% (forty percent) in each paper and in respect of candidates with locomotory disability of lower limbs, the minimum percentage marks shall be 45% (forty five percent) in each paper of National Eligibility-cum-Entrance Test.....”

(vi) Pass such other order/orders which may appear fit and proper in the facts and circumstances of the instant case.”

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.



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.”

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 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)

veena/rajiv-

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

