

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15085 of 2021

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Md. Shamim Son of Jiyaul Haq Ex-Mukhiya Gram Panchayat Dumri
Resident of Village Balia, P.S. Biraul, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Bihar, Patna
2. Secretary, State Election Commission, Bihar Patna Office at Sone Bhawan R Block Chouraha, Patna.
3. Principal Secretary, Department of Panchayat Raj, Bihar, Patna.
4. Commissioner, Darbhanga Division.
5. District Magistrate, Darbhanga.
6. Sub-Divisional Officer, Biraul District Darbhanga.
7. Executive Officer, Nagar Panchayat Biraul District Darbhanga.
8. Block Development Officer, Biraul, District Darbhanga.
9. Circle Officer Biraul, District Darbhanga.

... .. Respondent/s

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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.)

Appearance :

For the Petitioner/s : Mr.Diwakar Prasad Singh, Adv
For the Respondent/s : Mr.Pushkar Narain Shahi (AAG-6)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 07-09-2021

Heard learned counsel for the parties.

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

“ (i) That for issuance of appropriate writ, order or direction commanding the respondent Block Development officer (Respondent No.8) & Circle Officer (Respondent No.9) to respect the Governor's Notification published by Memo

No.990 dated 03.03.21 published under the signature of Joint Secretary to Government & further direction be given not to transgress the Boundary of other Gram Panchayat who was not included in Nagar Panchayat Biraul as such inclusion of Voters of Ward No.12 Thana No.293 in the Voter List of the Nagar Panchayat Biraul is illegal & arbitrary as such direction be given to revert back the illegally added voters added in Nagar Panchayat Biraul in adherence to Governor's Notification published by Memo No.990 dated 03.03.21 published under the signature of Joint Secretary to Government.

(ii) That for issuance of appropriate writ, order or direction commanding the respondents that the Nagar Panchayat Biraul was formed by Afjala Thana No.294 whose municipal boundary is described in Memo No.990 dated 03.03.21 published under the signature of Joint Secretary to Government & a correctly depicted sketch map is part of Letter No. 405 dated 26.05.20 Published under the Joint Signature of Block Development Officer, Circle Officer & Block Statistical Officer Biraul which shows that only Part of Thana No.294 known as revenue Village Afjala having 615 Hectare Land area declared was Biraul Nagar Panchayat but the Block Development officer Circle Officer started trading of Area & their Voter in connivance with some petty Level public Representative & started transferring the Voters whose House falls under Thana No.293 & under Gram Panchayat Dumri with sole intention to ejaculate none supporter of present local representative as such a direction be issued commanding the respondent Block Development officer & Circle Officer biraul not to Contravene Governor's Notification published by Memo No.990 dated 03.03.21 published under the authority of Governor Published under Section 3(1)(a), 4, 5, 6 & 8 to Bihar Municipal Act 2007 (Act No.11 of 2007).

(iii) That for issuance of appropriate writ, order or direction

commanding the respondent State Election Commission Bihar & District Magistrate Darbhanga to take suitable legal action against the responsible in case the contravention is found intentional since the representation submitted to the Authority & even the direction of State election commission was ignored & trading of Voters from one area to others at the Choice of some public representative was made for their personnel gain & the objection raised up to State Election Commission Bihar was ignored at all.

(iv) That for issuance of appropriate writ, order or direction commanding the respondent shifting of Voters of Dumri Panchayat especially the ward No. 12 was illegally made by Block Development officer Blraul.

(v) whereas Ward No.12 falls under Revenue Thana No.293 & Vide Memo No.990 dated 03.03.21 published under the signature of Joint Secretary to Government & further Vide sketch map published by letter No.405 dated 26.05.20 published under the Joint Signature of Block Development officer, Circle Officer & Block Statistical Officer Beaut by which ward No.12 to Gram Panchayat Balia under Thana No.293 was not included in Nagar Panchayat Biraul for which the Petitioner's representation submitted to Block Development officer to Chief Minister & state election Commission is rotting under dust as such direction be given to the respondents to investigate the facts whether the ward No. 12 falls under Revenue Thana No.293 & in case it is found that the Block Development officer has intentionally committed error circumventing the Memo No.990 dated 03.03.21 issued under the signature of Joint Secretary to Government & sketch map published by Letter No.405 dated 26.05.20 issued under the Joint Signature of Block Development officer, Circle Officer & Block Statistical Officer Biraul than suitable action be directed against the responsible.

(v) That for issuance of appropriate writ, order or direction

commanding the respondent to revise the Voter List of Dumri Gram Panchayat & Nagar Panchayat Biraul & restore the Voter to ward No.12 under Thana No.293 particularly those whose house falls under ward No.12 to Dumri Gram Panchayat be directed to be restore by specially ordered Revision of Voters before the ensuing Panchayat Election 2021 & since the Block Development officer has intentionally tempered the Boundary of Nagar Panchayat Biraul & Voter of remote Village was added at a booth having 6-10 Kilo Meter away. As such Shopping of Voters by Public Representative & tempering of Boundary of Nagar Panchayat may kindly declare illegal.

(vi) That for grant of any other relief or relief's to which the petitioner be found entitled in law be granted to them."

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. respondent no. 5 District Magistrate, Darbhanga, or any of the statutory authority 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)

ranjan/-

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