

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15170 of 2021

Dilip Kumar Bharti Son of Yadunandan Bharti Resident of Ward No. 03,
Tumariya Tola, P.S. Raxaul, District East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Urban Development and Housing Department,
Government of Bihar, Patna.
3. Divisional Commissioner, Tirhut Division Muzaffarpur.
4. District Magistrate, East Champaran.
5. Executive Officer, Raxaul, East Champaran.
6. Usha Devi Wife of Ram Niwas Bharti R/O Ward No. 03, Tumariya Tola, P.S.
Raxaul, East Champaran.
7. Kashi Nath Prasad S/o Late Shiv Prasad Sah R/O Ward No. 14, P.S. Raxaul,
East Champaran.
8. Kundan Kumar S/o Late Ram Prasad Singh R/O Ward No. 09 Gandhi
Ashram, Ashram Road, P.S. Raxaul, East Champaran.
9. Premchandra Prasad S/o Late Tapeswar Mahto R/O 23, Naga Road, P.S.
Raxaul, East Champaran.
10. Ravi Kumar Gupta S/o Late Jagdeo Prasad R/O Ward No. 10, Ashram Road,
P.S. Raxaul, East Champaran.
11. Raj Kishor Prasad S/o Late Kamal Das R/O Ward No. 15, Mai Sthan Mauje,
P.S. Raxaul, East Champaran.
12. Rita Devi W/o Kanhaiya Sarraf R/O Ward No. 11, Kali Mandir, P.S. Raxaul,
East Champaran.
13. Jaimanti Devi W/o Suresh Chauhan R/O Ward No. 24, Koiriya Tola, P.S.
Raxaul, East Champaran.
14. Satyam Kumar Srivastava S/o Late Nathuni Lal R/O Ward No. 16, Saraswati
Vidyamandir Block Road, P.S. Raxaul, East Champaran.
15. Amul Nisha W/o Haji Mukhtar Ansari R/O Ward No. 17, Bada Padeuaa, P.S.
Raxaul, East Champaran.
16. Chanda Devi W/o Suresh Sah R/O Ward No. 13, Mauje, P.S. Raxaul, East
Champaran.
17. Vishwanath Sah S/o Khublal Sah R/O Ward No. 01, Hawai Adda Road, P.S.
Raxaul, East Champaran.
18. Chini Ram S/o Late Sahdeo Ram R/O Ward No. 07, Ahirwatola, P.S.
Raxaul, East Champaran.
19. Khusboo Devi W/o Akhilesh Dayal R/O Ward No. 18, Block Road, P.S.
Raxaul, East Champaran.
20. Panna Devi W/o Late Ramlochan Sah R/O Ward No. 25, Pankaj Chowk, P.S.
Raxaul, East Champaran.

21. Subhash Chandra Singh S/o Late Shripati Singh R/O Ward No. 02, Tumariya Tola, P.S. Raxaul, East Champaran.
22. Archana Devi W/o Purshottam Kumar R/O Ward No. 04, Ashram Road, P.S. Raxaul, East Champaran.
23. Jitendra Kumar Datta S/o Late Chandra Kuar Datta R/O Ward No. 05, Tumariya Tola, P.S. Raxaul, East Champaran.
24. Ghanshyam Singh S/o Purshottam Sah R/O Ward No. 06, Bank Road, P.S. Raxaul, East Champaran.
25. Hasina Khatoon W/o Late Islam Quraishi R/O Ward No. 08, Islampur, P.S. Raxaul, East Champaran.
26. Rohini Sah W/o Gyanendra Kishor @ Bappi Sah R/O Ward No. 12, Kasturba Girls High School, P.S. Raxaul, East Champaran.
27. Md. Abbas S/o Late Isuf Miyan R/O Ward No. 16, Bada Padeuaa, P.S. Raxaul, East Champaran.
28. Usha Devi W/o Surendra Kumar R/O Ward No. 20, P.S. Raxaul, East Champaran.
29. Gayatrui Devi W/o Awadhesh Pandey R/O Ward No. 21, Sabji Bazar, P.S. Raxaul, East Champaran.
30. Suganti Devi W/o Sanjay Sah R/O Ward No. 22, Naya Road, P.S. Raxaul, East Champaran.

... .. 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.Sanjay Kumar Tiwari, Adv Mr. Rajnish Shandilya, Adv
For the Respondent/s	:	Mr.Yogendra Prasad Singh (AAG7)

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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) To direct the State Government as to dissolve the Municipal Council, Raxaul, for six months as the municipality has exceeded and abused its power vested

in it, thereby causing deviation of fund allocated under 15th Finance Commission and misappropriation of the public money.

(ii) To direct the State Government as to consider the incompetence of the Municipal Council, Raxaul, which has been persistently making default in the performance of the duties and the functions imposed on it by or under the Bihar Municipal Act, 2007(hereinafter referred to as the Act, 2007) and pass necessary order in accordance with law.

(iii) To direct the State Government as to constitute as committee in terms of section 69(2) (b) of the Bihar Municipal Act, 2007.

(iv) To direct and hold that the elected councilors from ward no. 1 to 25, of the Municipal Council, Raxaul, are disqualified as all of them have abused the respective power vested in them and further to hold them guilty of misconduct in discharge of their duties, and they all are incompetent to hold their respective post and are also liable under the criminal law.

(v)To direct the State Government to make alternative arrangement in terms of Section 70(1) for exercise of power and performance of duties of the Empowered Standing Committee or any other committee of the Municipality and also of the Chief councilor.”

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 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 be 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