

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16266 of 2021

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1. Anavarul Haque Son of Abdur Razzaque, resident of Village - Dipahi Dharharwa also known as Dipahi Sheikh Toli, P.O. Dipahi, P.S. - Chiraiya, District - East Champaran at Motihari.
 2. Md. Aasif Iqbal, Son of Md. Abdul Motin, Resident of Village - Dipahi Sheikh Toli, P.O. Dipahi, P.S. - Chiraiya, District - East Champaran at Motihari.
 3. Md. Dabir Alam, Son of Md. Waliullah, Resident of Village - Dipahi Sheikh Toli, P.O. Dipahi, P.S. - Chiraiya, District - East Champaran at Motihari.
 4. Obaidullah Son of Late Md. Wakil, Resident of Village - Dipahi Sheikh Toli, P.O. Dipahi, P.S. - Chiraiya, District - East Champaran at Motihari.

... .. Petitioner/s

Versus

1. The Bihar State Election Commission (Panchayat) 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner (Panchayat).
2. The State Election Commissioner (Panchayat), The Bihar State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna.
3. The District Election Officer (Panchayat), East Champaran at Motihari, District - East Champaran at Motihari.
4. The Block Development Officer, Chiraiyan, District - East Champaran at Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Awnish Kumar, Advocate
For the Respondent/s	:	Mr.Ajay (GA-5)
		Mr. Sanjeev Nikesh, Advocate

(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 : 20-09-2021

This petition was filed on 09.09.2021, which was
registered and listed immediately, and is taken up today for

hearing.

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

“ (I) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent Nos. 3 and 4 to produce on record the order by which they have shifted the place of Booth Nos. 58, 59 and 60 of Gram Panchayat Raj, Dipahi Dharharwa from Up-graded Middle School, Dipahi Urdu to Nationalized Middle School, Main Road, Sao Tola, Dipahi where Booth Nos. 55, 56 and 57 is already located and on production the same may be quashed by issuance of an appropriate writ in the nature of CERTIORARI inter alia on the ground :-

(a) That, the Nationalized Middle School, Main Road, Sao Tola, Dipahi is situated at a distance of 3 Kilometers which would cause inconvenience to the voters of Booth Nos. 58, 59 and 60 to cast their vote;

(b) Shifting place of Booth Nos. 58, 59, and 60 to Nationalized Middle School, Main Road, Sao Tola, Dipahi may cause communal violence on the date of polling since majority of the voters of Booth Nos. 58, 59 and 60 belongs to minority community whereas the majority of voters of Booth Nos. 55, 56, and 57 which is already located at Nationalized Middle School, Main Road, Sao Tola. Dipahi belongs to general category ; and

(c) Because of the establishment of six booths in one school, the guidelines of COVID, 2019 cannot be complied with.

(11) For issuance of an appropriate writ in the

nature of MANDAMUS .commanding and directing the Respondent Authorities for allocation of Booth Nos. 58, 59, and 60 of Gram Panchayat Raj, Dipahi Dharharwa in the same school i.e. Up-graded Middle School, Dipahi Urdu in which the above mentioned booths are allocated since much before in view of the guidelines issued by the State Election Commission vide its letter no.2114 dated 15.12.2015.

(111) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled 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 petitioners, under instructions, states that petitioners shall be content if a direction is issued to the authority concerned or any of the statutory authority to consider and decide the representation which the petitioners 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) Petitioners 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 four 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 petitioners to

take recourse to such alternative remedies as are otherwise available in accordance with law;

(e) We are hopeful that as and when petitioners take 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 petitioners to approach the Court, if the need so arises subsequently on the same and subsequent cause of action;

(g) Liberty also reserved to the petitioners 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)

Rajiv/veena-

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