

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18055 of 2021

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Dinesh @ Dinesh Kumar @ Dinesh Singh Son of Late Akhileshwar Singh,
Resident of Kurthaul Rajputana, P.S. - Parsa Bazar, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar.
2. The Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Punaichak, Patna.
3. The Bihar School Examination Board, Patna through its Secretary.
4. Indian Certificate of Secondary Education, New Delhi.
5. The Central Board of Secondary Education, New Delhi.
6. The Commissioner, Patna Division, Patna.
7. The District Magistrate, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dinesh Kumar, Advocate
For the Respondent/s : Smt. Shilpa Sing, G.A. 12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE A. M. BADAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-10-2021

This petition was filed on 18.10.2021 which was registered and listed immediately, and is taken up today for hearing.

Heard learned counsel for the parties.

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

- {i} For a direction upon the respondents to direct private schools across the State to refrain from charging fees such as development charge, transportation, sports, term, meal, medical, SMS, IT



and other curriculum activity etc. except for tuition fee from the parents for academic sessions 2020-2021 till the schools is reopened under Section-2 of the Epidemic Disease Act, 1897.

- (ii) For a direction on the respondents to ensure that private schools across to state remit/return the advance fees received from the parents except tuition fee to the parents including sessions March 2020 to April 2021 and March 2021 to April 2022.
- (iii) For a direction on heads of the school not to demand/collect the tuition fee from the parent/students on quarterly basis. The fees be directed to be collected on monthly basis alone and the schools should be restrained in regard to demand a consolidated fee without distinguishing the various heads i.e. tuition fee, curricular activities fees etc.
- (iv) For restraining the respondents private schools across the state to increase any fee in the Academic Session 2020-21 and 2021-2022 till further



specific direction of the State Government/Union of India.

- (v) The respondents be directed to ensure to provide the uninterrupted access of online education/material/ classes to all students without any discrimination, by providing them ID, PASSWORD and link immediately to get them online education facility.
- (vi) For a direction on the heads of the schools to ensure that in no case, deny ID, PASSWORD and link to those students/parents for getting online access of educational facilities/classes/materials etc. to those students who are unable to pay the school fee due to financial crises out of closure of business activities in the ongoing lockdown conditions.
- (vii) For a direction on the managing committees/heads of the schools restraining them from putting extra financial burden by creating any new head of fees.



- (viii) For a direction to head of all private schools to ensure that proper sanitization is done in the school premises and the schools be directed to provide masks to children, teacher and others school staff and to ensure that anyone in the school establishment used them as a post-covid-19 measure at least for six months and to ensure the availability of hygiene equipments i.e. hand sanitizer, face masks, paper napkins, dustbins in schools.
- (ix) For a direction on the respondents to issue order/guideline/directions with respect to fees/hygiene to all the private schools across the State and be further pleased to grant ad-interim ex-parte stay against demands of fees raised by the private schools until guidelines/order/directions permanently passed/implemented by the respondents and no coercive step be taken against the students/parents till further orders and be pleased to pass interim relief immediately since



parents are getting intimating/threatening calls from the schools authorities that if they will not deposit the fees consequences may follow, penalty charges will be levied or other coercive steps will be taken against the students by not allowing them to take online classes, by not publishing/providing final result and by not promoting in next higher class.

- (x) For any other relief/reliefs to which petitioner are found entitled in 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 petitioner, under instructions, states that



petitioner shall be content if a direction is issued to the Respondent No. 2 namely the Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Punaichak, Patna 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 Respondent No. 2 namely the Principal Secretary, Department of Education, Government of Bihar, New Secretariat, Punaichak, Patna shall consider and dispose it of expeditiously and preferably within a period of four weeks 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 four weeks 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)

(A. M. Badar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	26.10.2021
Transmission Date	

