

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18452 of 2021

T.N. Ajad, Son of Late Hira Singh, Ward No. - 9, Aikhan, Bhimnichak, P.S. -
dulhin Bazar, District- Patna - 801102.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Govt. of Bihar, Old Secretariat, Patna - 800015.
2. The Director General of Police, Govt. of Bihar, Old Secretariat, Patna - 800015.
3. The Principal Secretary Cum Mines Commissioner, Mines and Geology Department, Govt. of Bihar, Vikash Bhawan, Baily Road, Patna - 800014.
4. The Joint Secretary, Mines and Geology Department, Govt. of Bihar, Vikash Bhawan, Baily Road, Patna - 800014.
5. The Director, Mines and Geology Department, Govt. of Bihar Vikash Bhawan, Baily Road, Patna - 800014.
6. The Principal Secretary, Vigilance Department, Govt. of Bihar, Patna.
7. The Inspector General of Police, Vigilance Department, Govt. of Bihar, Patna.
8. The Superintendent of Police - cum- In charge Police Station, Vigilance Police Station, Patna.
9. The Inspector General of Police, Economic Offence Unit (E.O.U), Govt. of Bihar, Rajbansi Nagar, Patna, Bihar - 800001.
10. The Deputy Inspector General of Police, Economic Offence Unit (E.O.U), Govt. of Bihar, Rajbansi Nagar, Patna, Bihar - 800001.
11. The District Magistrate, District Collectorate Office, Gandhi Maidan, District- Patna - 800005.
12. The Superintendent of Police, Economic Offence Unit (E.O.U), District and Town- Patna, Bihar - 800001.
13. The District Mining Officer, Mines and Geology Department, District Collectorate Office, Gandhi Maidan, Patna - 800005.
14. The Deputy Superintendent of Police, Economic Offence Unit (E.O.U), District and Town - Patna.
15. The Station House Officer (S.H.O.), Economic Offence Police Station, District and Town - Patna.
16. Sri Nagendra Kumar, Son of Not Known, At present posted on the post of the Circle Officer, Dulhin Bazar, District- Patna.
17. Sri Ashok Kumar, Son of Not Known, At present posted on the post of S.H.O., Police Station - Dulhin Bazar, District- Patna.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Jayram Sharma, Advocate
For the Respondent/s : Mr.P K Verma, AAG-3

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE A. M. BADAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 26-10-2021

This petition was filed on 25.10.2021, 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):-

“A. For issuance of appropriate writ(s), order(s) and direction(s) commanding the respondent’s authority to carry out ‘preliminary inquiry’ into corruption allegations and register a case, that is, first information Report, on the basis of the Complaint dated 30.08.2021 (Annexure-2, Series) against Government Officers, respondent no. 16 & 17 and after investigation file the final report in accordance with law whereby and whereunder the Deputy Superintendent of Police Cum S.H.O. Economic Offence Unit (E.O.U), Patna lodged the F.I.R. Against Who are also Government Officers i.e. S.D.P.O., Paliganj, viz Tanvir Ahmad; Circle Officer and Inspector Cum S.H.O., Paliganj, Circle Officer and S.H.O., Vikram and S.H.O., Ranitalab in the district of Patna in which one of them in connection with Special Vigilance Case No. 27/2021 arising out of Economic Offence P.S. Case NO.14/2021 dated 01.09.2021 offences under section 13(2) read with 13(1)(b) of Prevention of Corruption Act,1988 which is pending before learned Special Judge, Vigilance Court, Patna. (Contained with



Annexure -03).

B. For direction to the respondents authority to take appropriate action against the Government Officers accused persons of the Complaint and for proper inquiry, investigation/supervision and take action against accused respondent's no.-16 and 17 who also constructed the multi storied building from income of illegal Sand Mining from Son and Punpun Rivers.

C. For other relief(s) for which the petitioner is legally entitled.”

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 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 four 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 Respondent No.11 namely the District Magistrate, District Collectorate Office, Gandhi Maidan, District- Patna 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 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	27.10.2021
Transmission Date	

