

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.419 of 2022

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M/s Sisodiya Event Management Private Limited Registered Office at Dhenuka Dadan, Saristabad, Rajputana, Gardanibagh, Patna-800002, through its Director Namely sanjay Kumar aged about 51 Years, Male, Son of Late Muktinath Singh Resident of Flat No.304, Jya Garden Apartmet, B. Block, P.S.-Gardanibagh, Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Home Secretary, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Commissioner, Patna Division, Patna.
5. The District Magistrate, Patna.
6. The Senior Inspector of Electric, Department of Energy, Government of Bihar, Patna.
7. The Senior Superintendent of Police, Patna.
8. The Superintendent of Police, Patna Town, Patna.
9. The Superintendent of Police, Traffic, Patna.
10. The Sub Divisional Magistrate, Patna Sadar, Patna.
11. The Deputy Collector, Law and Order, Patna.
12. The Office of the Fire Officer, Patna.
13. The City Magistrate, District Control Unit, Patna.
14. The Inspector of Police-Cum-S.H.O., Patliputra Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Niranjan Kumar, Advocate
For the Respondent/s : Mr.Sheo Shankar Prasad (SC 8)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

(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.)

Date : 11-02-2022

Petitioner has prayed for following relief (s) : -

“(i) For issuance of writ in the nature of mandamus or any other appropriate writ for commanding and directing the responsible respondent authorities to allow the petitioner to open the fun and fair, Kashmiri Woolen Market and Craft Fair in the ground of Patliputra Cooperative House Construction Limited, Patliputra Colony, P.S. - Patlipura, Patna-800013, in pursuance of order/ direction dated 11.12.2021 contained in memo no.2422 issued by the Sub Divisional Officer, Patna Sadar, Patna as well as other consequential letters/ orders by which “NOC” have been issued by the concerned authorities of respective departments for the period from 12.12.2021 to 26.01.2022.

(ii) For issuance of writ in the nature of mandamus or any other appropriate writ for commanding and directing the responsible respondent authorities for extending the period by 45 days from actual date of opening of the events of fun and fair, Kashmiri Woolen Market and Craft Fair, for which, already permission had been granted to this petitioner by the competent authority concerned vide order / direction dated 11.12.2021 contained in memo no.2422 issued by the Sub Divisional Officer, Patna Sadar, Patna as well as other consequential letters / orders by which “NOC” have been issued by the concerned authorities of respective departments.

(iii) For issuance of writ in the nature of mandamus or any other appropriate writ for commanding and directing the respondent no.14 to obey the direction / order of the higher authorities as also restrain him from doing arbitrary and illegal as well as unwarranted action against the petitioner having ulterior motive.

(iv) For issuance of other order or orders, which your Lordships may deem fit and proper in the facts and circumstances of the case for



which this petitioner is entitled to.”

We are of the considered view that the present petition is totally misconceived in law. The principle of issuing mandamus is now well settled. There has to be failure of duty on the part of the authority to discharge the statutory functions, thereafter only, the Court can issue a writ of mandamus.

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.”

In the instant case, we do not find the petitioner to have invited our attention to any Statute whereby the respondent authority is obliged to grant permission to the petitioner for setting up an open fair termed as “Fun and Fair, Kashmiri Woolen Market and Craft Fair in the ground of Patliputra Cooperative House Construction Limited, Patliputra Colony, P.S. Patlipputra.



We are of the view that the N.O.C. (Annexure-3, page-24) referred to as the permission granted by the authority is an N.O.C. issued in favour of the petitioner. Permission has to be granted by an appropriate authority, in accordance with law. From the petition, we cannot make out as to whether the petitioner has approached the appropriate authority for grant of permission pursuant to the N.O.C. issued (Annexure-3, page-24).

As such, we dismiss the present petition so filed in its present form.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/chn

AFR/NAFR	
CAV DATE	
Uploading Date	17.02.2021
Transmission Date	

