

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1087 of 2022

1. Arvind Kumar Son of Ramchandra Prasad, Resident of Bus Stand Road, Rafiganj, P.O. and P.S. Rafiganj, District - Aurangabad.
2. Ajay Kumar, Son of Ramchandra Prasad, Resident of Near Badi Durga Mandir, Indira Path, P.O. and P.S. Rafiganj, District - Aurangabad.
3. Kamlesh Singh, Son of Ram Bachan Singh, Resident of Ward No. 1, Abdulpur, P.O. and P.S. Rafiganj, District - Aurangabad.
4. Md. Aslam @ Md. Aslam Shekih, Son of Md. Rafik, Resident of Village - Pachar, P.O. - Sarawak, P.S. - Rafiganj, District - Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Additional Chief Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The District Magistrate, Aurangabad, District - Aurangabad.
5. The Deputy Development Commissioner, Aurangabad, District - Aurangabad.
6. The Sub-Divisional Officer, Aurangabad, District - Aurangabad.
7. The Circle Officer, Rafiganj, District - Aurangabad.
8. The Executive Engineer, Road Construction Department, Road Division No. 1, Aurangabad.
9. The Nagar Panchayat, Rafiganj through the Executive Officer, P.O. and P.S. - Rafiganj, District - Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Awnish Kumar, Adv
For the Respondent/s	:	Mr.Md. Khurshid Alam (AAG12)

(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.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 29-01-2022

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, restraining the Respondent no.8 for construction of toilet over the Plot Nos.1509/1824 situated under Rafiganj Bus Stand and it was acquired by the State Government for the purposes of Road construction even though it is situated near Rafiganj Bus Stand on the ground that the aforesaid Plot No.1509/1824 is the land belonging to the Road Construction Department and ,therefore, any construction over the aforesaid land would encroach upon the road namely Rafiganj -Kasma Road and ,therefore, not in accordance with law.

(II) For issuance of an appropriate writ in the nature of MANDAMUS , commanding and directing the Respondent no.3 to recover the public money spent upon the aforesaid incomplete construction of the toilet from the salary of the Respondent no.9 since even after the orders of the competent authority of Road Construction Department, he is bent upon for the aforesaid construction for the reasons best known to him and he has ignored to shift the aforesaid construction of toilet to neighbouring plots occupied by the Nagar Panchayat.”

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, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioners, learned counsel for the petitioners, under instructions, states that petitioners shall be content if a direction is issued to the authority concerned **i.e. respondent no. 5 Deputy Development Commissioner, Aurangabad**, 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 petitioners, 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) 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 be 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 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 petitioners 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)

(S. Kumar, J)

ranjan/-

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