

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1085 of 2022

1. Ashok Kumar Singh Son of Late Rama Kant Singh Resident of Village and P.O. Nawada, P.S. Jalalpur, District- Saran at Chapra.
2. Amit Kumar Dubey Son of Om Prakash Dubey Resident of Village and P.O. Asahani, P.S. Rasalpur, District- Saran at Chapra.
3. Md. Yunus Ansari Son of Late Newaji Mansuri Resident of Village- Chand Kewari Sohansa, P.O. Sohansa, P.S. Paroo, District- Muzaffarpur.
4. Rukhsana Khatoon Wife of Mustak Alam Resident of Village- Chahatpur, P.O. and P.S. Palasi, District- Araria.
5. Madan Kumar Yadav Son of Shivanand Yadav Resident of Village- Kachmoh, P.O. Dehti, P.S. Palasi, District- Araria.
6. Mokhtar Yadav Son of Late Chandrika Yadav Resident of Village- Jadopur, P.O. Jadopur Shukul, P.S. Jadopur, District- Gopalganj.
7. Prabhu Yadav @ Prabhu Kumar Yadav Son of Baleshwar Yadav Resident of Village- Jhandapur, P.O. Amarpur, P.S. Bihpur, District- Bhagalpur.
8. Pappu Yadav Son of Rajendra Yadav Resident of Village- Arsandih, P.O. Amarpur, P.S. Bihpur, District- Bhagalpur.
9. Sunil Yadav Son of Chandradev Yadav Resident of Village- Arsandih, P.O. Amarpur, P.S. Bihpur, District- Bhagalpur.
10. Dharmendra Yadav Son of Nageshwar Yadav Resident of Village- Arsandih, P.O. Amarpur, P.S. Bihpur, District- Bhagalpur.
11. Daroga Mahto Son of Late Rasik Mahto Resident of Village- Arsandih, P.O. Amarpur, P.S. Bihpur, District- Bhagalpur.
12. Sajjan Mahto Son of Girish Mahto Resident of Village- Arsandih, P.O. Amarpur, P.S. Bihpur, District- Bhagalpur.
13. Aarti Kumari Wife of Bindu Kumar Resident of Village- Bhatta, P.O. Bhattagarh, P.S. Roh, District- Nawada.
14. Ramvilas Yadav Son of Krishna Yadav Resident of Village- Shekhapura, P.O. Koshi, P.S. Roh, District- Nawada.
15. Pramod Jayasaval Son of Mahaveer Jayasaval Resident of Village and P.O. Brahmpur, P.S. Fulparas, District- Madhubani.
16. Satyam Kartikey Vatsa Son of Umesh Kumar Singh Resident of Village- Madhopur Govind, P.O. Mehshi, P.S. Chakiya, District- East Champaran at Motihari.
17. Rammohan Prasad Son of Hazari Sah Resident of Village- Mani Chapra, P.O. Mehshi, P.S. Chakiya, District- East Champaran at Motihari.
18. Rameshwar Chaudhary Son of Late Basudeo Chaudhary Resident of Village and P.O. Puran Chapra, P.S. Chakiya, District- East Champaran at Motihari.
19. Shyamakant Dubey Son of Ramji Prasad Dubey Resident of Village- Korigawan, P.O. Ganesh Sirsiya, P.S. Chakiya, District- East Champaran at Motihari.
20. Anil Kumar Son of Paras Prasad Resident of Village and P.O. Darmaha, P.S.

Keshariya, District- East Champaran at Motihari.

21. Uday Kishore Singh Son of Ram Narayan Singh Resident of Village- Darmaha Tola- Mahuawan, P.O. Darmaha, P.S.- Keshariya, District- East Champaran at Motihari.
22. Mohan Kumar Patel Son of Bujhawan Rai Resident of Village- Darmaha Tola- Ramgarhwa, P.O. Rajpur, P.S. Keshariya, District- East Champaran at Motihari.
23. Umeshwar Singh Son of Singeshwar Singh Resident of Village- Darmaha, Tola- Ramgarhwa, P.O. Rajpur, P.S. Keshariya, District- East Champaran at Motihari.
24. Satyanand Kumar Son of Jagdish Prasad Kushwaha Resident of Village- Alakdabari, P.O. Dilwarpur, P.S. Keshariya, District- East Champaran at Motihari.
25. Shyam Narayan Bhagat Son of Shiv Nandan Bhagat Resident of Village- Alakdabari, P.O. Dilwarpur, P.S. Keshariya, District- East Champaran at Motihari.
26. Mohammad Irshadullah Son of Abdur Farf Resident of Village- Ramdiha, P.O. Gawandra, P.S. Chakiya, District- East Champaran at Motihari.
27. Pritam Kumar Son of Ajit Lal Prasad Gupta Resident of Village- Pipra Khem, P.O. Pipra Khem, P.S. Kalyanpur, District- East Champaran at Motihari.
28. Awadh Rai Son of Ramdeni Rai Resident of Village- Khokhra, P.O. Rajpur, P.S. Kalyanpur, District- East Champaran at Motihari.
29. Surendra Prasad Son of Kailash Prasad Resident of Village- Rajpur, P.O. Rajpur, P.S. Keshariya, District- East Champaran at Motihari.
30. Mankeshwar Kumar Son of Jagarnath Prasad Resident of Village and P.O. Rajpur, P.S. Keshariya, District- East Champaran at Motihari.
31. Indu Devi Son of Chandeshwar Kumar Thakur Resident of Village- Gopal Chapra, P.O. Bakhri, P.S. Kalyanpur, District- East Champaran at Motihari.
32. Moti Devi Wife of Sri Upendra Jha Resident of Village- Machhaita, P.O. Kurson Nadiyami, P.S. Sakatpur Machhaita, District- Darbhanga.
33. Setu Kumar Dubey Son of Dayanand Dubey Resident of Village- Banauta Mukund, P.O. Parsa, P.S. Parsa, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Department, Government of Bihar, Patna.
3. The State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
4. The State Election Commissioner, The State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna.
5. The Secretary, The State Election Commission (Panchayat), 3rd Floor, Sone

Bhawan, Birchand Patel Path, Patna.

6. The District Magistrate-cum-District Election Officer (Panchayat), Saran at Chapra, District- Saran at Chapra.
7. The District Magistrate-cum-District Election Officer (Panchayat), Muzaffarpur, District- Muzaffarpur.
8. The District Magistrate-cum-District Election Officer (Panchayat), Araria, District- Araria.
9. The District Magistrate-cum-District Election Officer (Panchayat), Bhagalpur, District- Bhagalpur.
10. The District Magistrate-cum-District Election Officer (Panchayat), Gopalganj, District- Gopalganj.
11. The District Magistrate-cum-District Election Officer (Panchayat), Nawada, District- Nawada.
12. The District Magistrate-cum-District Election Officer (Panchayat), Madhubani, District- Madhubani.
13. The District Magistrate-cum-District Election Officer (Panchayat), East Champaran at Motihari, District- East Champaran at Motihari.
14. The District Magistrate-cum-District Election Officer (Panchayat), Darbhanga, District- Darbhanga.
15. The Block Development Officer-cum-Returning Officer, Panchayat Election, 2021, Jalalpur Block, District- Saran at Chapra.
16. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Ekma Block, District- Saran at Chapra.
17. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Paroo Block, District- Muzaffarpur.
18. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Palasi Block, District- Araria.
19. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Bihpur Block, District- Bhagalpur.
20. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Gopalganj Block, District- Gopalganj.
21. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Roh Block, District- Nawada.
22. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Ghoghardiha Block, District- Madhubani.
23. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Kalyanpur Block, District- East Champaran at Motihari.
24. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Taradih Block, District- Darbhanga.
25. The Block Development Officer-cum-Returning Officer, Panchayat Election 2021, Parsa Block, District- Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Awnish Kumar, Adv
For the Respondent/s : Mr.Prabhat Kr. Verma (AAG3)
Mr. Saroj Kumar Sharma AC to AAG-3

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(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) Issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent State Election Commission to declare the Panchayat Election, 2021 held in the petitioners' Gram Panchayat for the post of Mukhiya as void election, if it has been conducted and concluded by the Officers associated with the conduct of aforesaid election in violation of statutory provisions contained under Rule- 46 and Rule- 48 of the Bihar Panchayat Election Rules, 2006.

(II) Issuance of an appropriate writ in the nature of CERTIORARI for quashing the letter no. 5131 dated 08.10.2021 issued by the State Election Commission and addressed to all the District Election Officers, directing them not to issue copies of table-wise result sheet of Bihar Panchayat Election, 2021 prepared in Form-19, 20(1) , 20(2) and 20(3) to any applicant under Right to Information Act on the ground that if the documents referred to in the said letter are statutory documents ,supply of its copies cannot be restricted to the candidates or any person applying for it in view of the provisions contained Rule- 63, 68 and 76(3) of the Bihar Panchayat under Election Rules, 2006.

(III) For a declaration that if an election has been conducted in violation of the statutory provisions and in absence of authorized Agents of the candidates contesting the election such elections are neither fair nor free in the eye of law and ,therefore, such election are no election and the outcome of such election in form of

declaration of result in favour of one or the other candidate is not at all sustainable in the eye of law.”

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. 4 State Election Commissioner, State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, 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 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 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