

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1718 of 2022

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Avez Ahmad alias Awez Ahmad Son of Riyaz Ahmad, resident of MIG - 23, Awash Vikash Colony, Haldwani, Nainital, Uttarakhand- 263139 through its authorized representative namely Diwakar Singh male aged about 31 years son of Satya Pal Singh resident of Narayanpur Chhanga, Tanda Afzal (M.S.T.) Moradabad, Uttar Pradesh - 244602.

... .. Petitioner/s

Versus

1. The Bihar State Mining Corporation Ltd. through its Chief Executive Officer, Bihar, Patna.
2. The Chief Executive Officer, Bihar State Mining Corporation Ltd, Bihar, Patna.
3. The Administrative Officer, Bihar State Mining Corporation Ltd., Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Naresh Dikshit, Spl. P.P. Mines

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 21-03-2022 Petitioner has prayed for the following relief(s):

“(a) For issuance of a writ or order or direction in the nature of mandamus upon the respondents to refund the entire auction amount paid by the petitioner in favour of the respondent State Mining Corporation Ltd (hereinafter referred to as the Corporation for short) against settlement of sandghats in the district of Jamui till 31.03.2022;

(b) For further issuance of a writ or



order or direction restraining the respondents from taking any coercive action against the petitioner in terms of the notice inviting tender as well as the agreement executed with the petitioner on 27.12.2021 for any reasons;

(c) For further holding and a declaration that in terms of the directions of the honourable Supreme Court in the order dated 10.11.2021 passed in Civil Appeal Number 3661 – 3662 of 2020 (The State of Bihar And Others Versus Pawan Kumar And Others) the respondent Corporation is the lease holder or say the concessionaire in terms of the provisions of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation And Storage) Rules, 2019 (hereinafter referred to as the rules 2019 for short) and the petitioner is simply a contractor engaged by the said Corporation to carry out the instructions of the said Corporation for the purpose of mining in the sandghats allotted in terms of the tender notice;

(d) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.”

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 expeditiously, which the petitioner shall be



filing within a period of two weeks from today for redressal of the grievance(s).

Shri Naresh Dikshit, learned counsel for the respondents, states that if such a representation is filed by the petitioner within the time stipulated, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of two weeks from the date of its filing along with a copy of this order.

Statement accepted and taken on record.

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.”

As such, petition stands disposed of on the following terms:-

- (a) Petitioner shall approach the authority concerned i.e. Respondent No.2, namely The Chief Executive Officer, Bihar State Mining Corporation Ltd., Bihar, Patna, within a period of two 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 three months from the date of its filing along with a copy of this order;
- (c) The order assigning reasons shall be communicated to the petitioner;
- (d) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;
- (e) Also, opportunity to place on record all relevant materials/documents shall be granted to the



parties;

(f) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) 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;

(h) Liberty reserved to the petitioner to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;

(i) We have not expressed any opinion on merits. All issues are left open;

(j) 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, shall stand
disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/DKS

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