

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2042 of 2022

-
-
1. Nand Lal Mandal, S/o Shaldev Mandal, R/o - Kharoni Baijani, P.S. - Jagdishpur, Distt. - Bhagalpur, Bihar.
 2. Rakesh Kumar Das, S/o Gangadhar Das, R/o Vidya Nagar, P.S. - Mirchaibari Dist. - Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna - 1.
2. The Chief Secretary, Govt. of Bihar, Old Secretariat, Patna - 1.
3. The Principal Secretary to the Chief Minister, Govt. of Bihar, Anne Marg, Patna.
4. The Development Commissioner, Govt. of Bihar, Patna.
5. The Principal Secretary Planning and Development Govt. of Bihar, Old Secretariat, Patna.
6. The Director Economics Statistics, Department of Planning Govt. of Bihar, Old Secretariat, Patna.
7. The Commissioner, Bhagalpur Division, Bhagalpur, Bihar.
8. The District Magistrate, Bhagalpur, Bihar.
9. The Incharge District Statistical Officer Bhagalpur, Bihar.
10. The Additional Chief Secretary, Vigilance Department, Govt. of Bihar, Patna.
11. The Additional Director General of Police, Vigilance Investigation Bureau, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surendra Kumar Singh, Advocate Ms. Sudha Chandra, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG 4 Mr. Alok Kumar Rahi, AC to AAG-4

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



Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

- i) To issue an appropriate writ, order or direction for instituting a High level Inquiry/Vigilance Inquiry into mass Embezzlement and bungling of Govt Funds /allotments by the In-Charge District Statistical Officer, Bhagalpur in various schemes running under the Respondents by misusing his position/power for his personal gains.
- ii) To issue further appropriate writ, order or Direction for taking appropriate action against the Respondent Principal Secretary and other responsible officials for their laches and negligence in not taking any appropriate steps for inquiry of said mass embezzlement, bungling and fraud with the Government Treasury duly brought to their notice and to the Department by the Petitioners.
- iii) To issue further appropriate writ, order or direction for instituting a High Level Inquiry into the conduct and taking immediate action against the Respondents and unknown private individuals for aiding and facilitating, Sri Shambhu Rai, the In-charge District Statistical Officer for structuring fake/non-existent expenditure in the guise of illegal proxy appointments of DATA ENTRY COMPUTER OPERATORS/ASSISTANT DATA ENTRY COMPUTER OPERATORS and then making fraudulent withdrawals and deposits into the personal account of a private individuals, from various schemes including the RAJIV AAWAS Yojna (Scheme) Fund and सहाय सांख्यिकी विभाग (TOTAL STATISTICAL DEVELOPMENT SCHEME HEAD) allocated/sanctioned by the Govt. of Bihar for the payment of wages of the aforesaid DATA ENTRY COMPUTER OPERATORS.
- iv) This Hon'ble Court may adjudicate and hold that it is the statutory duty of the Respondents to issue ensure all appointments for any post in all Govt. Establishments/Departments permanent or temporary are to be made only by the appropriate authorised agencies notified in this respect and that the funds allocated for payment of wages of the Operators appointed by BELTRON are duly made and routed to the DATA ENTRY COMPUTER OPERATORS only through notified agencies as per the existing established rules and regulations of the State Govt.
- v) This Hon'ble Court may further adjudicate and hold that Respondents have no right/ jurisdiction to directly appoint/recruit any individual on any post in any Establishments/Departments against the norms of the Govt procedure or withdraw any amount from the govt. treasury as also ignoring the Financial Rules Guidelines.
- vi) This Hon'ble Court may further adjudicate and hold that Respondents after being informed of the money making racket being run under the supervision of the Respondent In-Charge District Statistical Officer were duty bound to inquire and investigate such serious allegations and constitute a high level inquiry committee for this purpose and take appropriate and suitable penal actions against the wrong doers.
- vii) To award any other relief or reliefs as this Hon'ble Court may deem fit and proper in the light of the facts of this case.

Learned counsel for the State opposes the petition stating that the petition is misconceived; raises disputed question of fact; is not in public interest; and that the issue can



be best resolved at the local level by the appropriate authorities.

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 to consider and decide the representation of the petitioners, which is pending before him.

Learned counsel for the respondents states that petitioners' request dated 24th April, 2021 (Annexure-4) shall positively be decided in accordance with law by passing a speaking order within a period of four weeks from today.

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) Petitioners shall approach the authority concerned within a period of four weeks from today along with a copy of this order 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 weeks from the date of appearance of the petitioners 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 take 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, should the need so arise 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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	14.02.2022
Transmission Date	

