

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2335 of 2022

=====

Mritunjay Kumar, S/o Late Sakaldev Singh, R/o Vill-Matase, Ward No. 10,
P.O. and P.S.-Fatehpur, District-Gaya (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Raj Department, Govt. of Bihar, Patna.
3. The Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
4. The District Magistrate, Gaya, District-Gaya.
5. The Block Development Officer, Fatehpur, Gaya District.
6. The Block Panchayat Raj Padadhikari, Fatehpur, Gaya District.
7. The Mukhiya, Gram Panchayat Matase, District Gaya.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Koushlendra Narayan, Advocate
		Mr. Shiw Kumar Prabhakar, Advocate
For the Respondent/s	:	Mr. Ajay, GA-5

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

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 : 04-03-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-



- (i) For order of Inquiry through SIT/ vigilance/ CBI or any other appropriate organisation with respect to bungling of the Public exchequer by the authorities/ respondents concerned in 'Har Ghar Nal Ka Jal' Scheme (Tap Water Supply to every house Scheme) Govt of Bihar, Mataso village, ward no. 10,12,13 Gram Panchayat Mataso, Block Fatehpur, District- Gaya.
- (ii) For recovery of the Public Money from the authorities concerned who has Syphoned of the Public money in the aforesaid scheme in Mataso Gram Panchayat, Ward no. 10,12,13 in Gaya District and also for penal action against the authorities concerned.
- (iii) For any other relief(s) for which the petitioner would be found entitled in the facts & circumstances of the 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.

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 in favour with the submissions made across the Bar, learned counsel for the petitioner does not press the instant petition, reserving liberty to take recourse to such other alternative remedies as are otherwise available in accordance with law, including filing a representation before the authority concerned.

Liberty as prayed for is granted.

Petition stands disposed of on the following terms:-

(a) Petitioner shall be at liberty to take recourse to the remedy under the 'Har Ghar Nal Ka Jal' Scheme (Tap Water Supply to every house Scheme) as also other alternative remedies available in accordance with law, including filing a representation before the authority concerned for redressal of the grievance(s);

(b) As and when any such petition is filed before the



authority concerned, we are sure that the same shall be considered and decided expeditiously, in accordance with law, by passing a reasoned and speaking 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) Liberty reserved to the petitioner to approach the Court, should the need so arise subsequently on the same and subsequent cause of action;

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

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(Mohit Kumar Shah, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	08.03.2022
Transmission Date	

