

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2395 of 2022

Rohit Kumar, Advocate, Patna High Court Son of Laxmi Nath Jha, at present member of Advocate s Association Patna High Court, Resident of C/o - B.B. Srivastawa Maheshwar Chandra Niwas, New By Pass, Post- Anisabad, District - Patna - 800002, Mibilie No. - 9973341419. e-mail ID- rohitkumaradvocate.phc@gmail.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary of Chief Minister's Secretariat, Patna, 4, Deshantaran Marg Rajbansi Nagar, Patna, Bihar - 800001.
2. The Principal Secretary of Chief Minister's Secretariat, Patna - 4 Deshantaran Marg, Rajbansi Nagar, Patna, Bihar - 800001.
3. The Chief Secretary Government of Bihar, New Secretariat, Bailey Road, Patna, Bihar.
4. The Principal Secretary Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, Bailey Road, Patna - 800015.
5. The Chief Town Planner, Town Planning Organization Urban Development and Housing Department, Government of Bihar Vikas Bhawan, Bailey Road, Patna, Bailey Road, Patna - 800015.
6. The Comptroller and Auditor General of India, (CAG), Pocket- 9, Deen Dayal Upadhyaya Marg, New Delhi- 110124.
7. The Additional Deputy Comptroller and Auditor General (Eastern Region) DG- I (ER), PD-II (ER), Audit, Offices of 4 States Bihar, Jharkhand, Odisha and West Bengal, Pocket- 9 Deen Dayal Upadhyaya Marg, New Delhi - 110124.
8. The Accountant General (Audit) Bihar, Veerchand Patel Road Area, Patna, Bihar 800001.
9. The Principal Secretary, Directorate of Economics and Statistics Department of Planning and development, Government of Bihar, 1st floor, Block - 3, Annexe Building Main Secretariat, Patna - 8000015, email-dir-stat-bih@nic.in
10. The Director, Directorate of Economics and Statistics, Department of planning and development Government of Bihar, 1st floor Block - 3, Annexe Building, Main Secretariat Patna - 800015.
11. The Chief Electoral Officer-cum-Principal Secretary, State Election Commission, Bihar, 7, Sardar Patel Marg, Mangles Road, Patna - 80005.
12. The Additional Chief Electoral Officer-cum-Additional Secretary, State Election Commission, Bihar, 7 Sardar Patel Marg, Mangles Road, Patna - 800015.
13. The Collector-cum-District- Magistrate, Araria.
14. The Collector-cum-District - Magistrate, Aurangabad.



15. The Collector-cum-District - Magistrate, Banka.
16. The Collector-cum-District - Magistrate, Begusarai.
17. The Collector-cum-District - Magistrate, Bhagalpur.
18. The Collector-cum-District - Magistrate, Bhojpur.
19. The Collector-cum-District - Magistrate, Buxar.
20. The Collector-cum-District - Magistrate, Darbhanga.
21. The Collector-cum-District - Magistrate, East Champaran at Motihari.
22. The Collector-cum-District - Magistrate, Gaya.
23. The Collector-cum-District - Magistrate, Gopalganj.
24. The Collector-cum-District - Magistrate, Jamui.
25. The Collector-cum-District - Magistrate, Jehanabad.
26. The Collector-cum-District - Magistrate, Khagaria.
27. The Collector-cum-District - Magistrate, Kishanganj.
28. The Collector-cum-District - Magistrate, Kaimur at Bhabua.
29. The Collector-cum-District - Magistrate, Katihar.
30. The Collector-cum-District - Magistrate, Lakhisarai.
31. The Collector-cum-District - Magistrate, Madhubani.
32. The Collector-cum-District - Magistrate, Munger.
33. The Collector-cum-District - Magistrate, Madhepura.
34. The Collector-cum-District - Magistrate, Muzaffarpur.
35. The Collector-cum-District - Magistrate, Nalanda.
36. The Collector-cum-District - Magistrate, Nawada.
37. The Collector-cum-District - Magistrate, Patna.
38. The Collector-cum-District - Magistrate, Purnea.
39. The Collector-cum-District - Magistrate, Rohtas.
40. The Collector-cum-District - Magistrate, Saharsa.
41. The Collector-cum-District - Magistrate, Samastipur.
42. The Collector-cum-District - Magistrate, Shiohar.
43. The Collector-cum-District - Magistrate, Sheikhpura.
44. The Collector-cum-District - Magistrate, Saran.
45. The Collector-cum-District - Magistrate, Sitamarhi.
46. The Collector-cum-District - Magistrate, Supaul.
47. The Collector-cum-District - Magistrate, Siwan.
48. The Collector-cum-District - Magistrate, Vaishali.
49. The Collector-cum-District - Magistrate, West Champaran.
50. Mr. Anand Kishore, Indian Administrative Service, ID No. 045700, Son of Late R.R. Kishore, at present Principal Secretary Urban Development Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna -



800015.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rohit Kumar, In Person
Mr. Manish Kumar No. 13, Advocate
For the Respondent/s : Dr. K.N. Singh, ASG
Mr. Subhash Prasad Singh, GA-3
Mr. Arun Kumar Arun, Advocate

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):-

(A) For issuance of writ in the nature of certiorari or any other appropriate writ for setting aside of letter No. झापांक- 5 वि०/गठन-02/2017-1769/न०वि०आ०वि०, Memo No. 5/Urban Dep/Consti/02/2017-1769, Memo No. 1769 Patna dated 20.05.2000 under signature of Secretary of Urban development and Housing Department



(Contained in Annexure-2) Government of Bihar whereby and where under proposal newly constitution of new Urban Local bodies and upgradation of old Urban Local Bodies under section of 3 of Bihar Municipal (Amendment) Act 2020 and the population is count on census 2011 which is totally violation of section 2(74) of Bihar Municipal Act 2007 when census 2021 is available. However constitution of new Urban Local Bodies and upgradation of old Urban Local Bodies from Panchayat to Municipalities normally can only take place at intervals of 10 years- unless census figures change rural area would remain a rural area and an urban area would remain an Urban area - rural area would not by passage of time without change in figures of census migrate to urban areas.

(B) For issuance of writ in the nature of certiorari or any other appropriate writ for setting aside of Letter No. 5/Urban dep/Constitution 02/2017-1713/Urban Development and Housing department पत्र संख्या 5 न०वि०/गठन-०२/२०१७-१७१३/न०



वि० एवं आ०वि० dated 14.05.2020 under signature of secretary urban development and Housing Department, Government of Bihar Contained in Annexure-1 whereby and where under Proposal of Constitution of New Urban Local Bodies and upgradation of old Urban Local Bodies in which counting of Population is Major factor which count on census 2011 when census 2021 is available.

(C) For issuance of a direction(s), order(s) or writ(s) including writ in the nature of Mandamus commanding the concerned respondent authorities to take appropriate steps for revisit as well as reconsider notification letter No. झापांक 5 न०वि०/गडन-02/2017-1769/न० वि० आ०वि० Memo No. 5 Urban Development Constitution/02/2017-1769 dated 20.05.2020 under signature Secretary of Urban Development and Housing department Government of Bihar (Contained in Annexure- 2) whereby and where under proposal newly Constitution of New Urban Local bodies and up gradation of old urban local bodies under section of 3 of Bihar Municipal



(Amendment) Act 2020 and the population is count an census 2011 which is totally bad in eye of law. It has count on census 2020.

(D) For issuance of a direction(s), order(s) or writ(s) including writ in the nature of Mandamus commanding the concerned respondent authorities to take appropriate steps for revisit as well as reconsider Bihar Bazette (Extra Ordinary) No. 484 dated 10.08.2020 whereby and where under Amendment of section 3 of Bihar Municipal Act 2007 of Second Proviso of sub-section(1) of Section 3 of the Bihar Municipal Act 2007 shall be substituted by following:-

Provided further that the total population of main cultivator workers and marginal cultivator workers shall be below fifty.

(E) Any other writ/writs for granting any other relief/ reliefs for which the petitioners are found entitled to in the facts and circumstances of the present 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 in favour with the submissions made across the Bar, 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 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.

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 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. 12, namely the Additional Chief Electoral Officer-cum-Additional Secretary, State Election Commission, Bihar, 7 Sardar Patel Marg, Mangles Road, Patna - 800015 within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The said authority 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 petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(e) 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;

(f) Liberty reserved to the petitioner 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)

(Mohit Kumar Shah, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	08.03.2022
Transmission Date	

