

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2607 of 2022

1. Batohi Mandal Son of Legeshvar Mandal Resident of Village-Latraha, Police Station-Jalley, District-Darbhanga.
2. Mangal Ram Son of Bechan Ram Resident of Village-Latraha, Ward No. 06, Police Station-Jalley, District-Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary-Cum-Principal Secretary, Urban Development and Housing Department, Patna, Bihar.
3. The Joint Secretary, Urban Development and Housing Department, Patna, Bihar.
4. The Deputy Secretary, Urban Development and Housing Department, Patna, Bihar.
5. The Principal Secretary, Panchayati Raj Department, Patna, Bihar.
6. The Director, Panchayati Raj Department, Patna, Bihar.
7. The Collector-Cum-District Magistrate, Darbhanga.
8. The District Panchayati Raj Officer, Darbhanga.
9. The Sub Divisional Officer, Sadar, Darbhanga.
10. The Block Development Officer, Jalley Block, Darbhanga.
11. The Circle Officer, Jalley Darbhanga.
12. The Chief Election Commissioner, Patna, Bihar.
13. The Secretary, State Election Commissioner, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mazharul Hassan, Advocate
For the Respondent/s	:	Mr.Yogendra Pd. Sinha (AAG7)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 25-03-2022

Heard learned counsel for the parties.

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

“That this writ application is being filed in the nature of Public Interest Litigation for issuance of a writ in the nature of certiorari or any other appropriate writ/rule/direction quashing Memo No. 3750 dated 28.12.2021 (Annexure-3) whereby and where under Notification No. 2779 dated 26.07.2021 has been cancelled and also the Memo No. 992 dated 03.03.2021 whereby and where under Panchayat Jalley south total ward and Ward No. 6 to 17 of Jalley North Panchayat has been converted in to Nagar Panchayat thereafter Panchayat Election 2021 was held in Jalley Block on 15.11.2021 except Jalley South Ward No. 6 to 17 Jalley North Panchayat. Thereafter all of sudden the Letter No. 3750 dated 28.12.2021 issued from the Urban Development and Housing Department, Patna, Bihar stating therein Government of Bihar exercise the power under Section 31(1) a, 4, 5, 6 and 8 Nagar Panchayat, Jalley including newly elected Ward No. 6, 7 and 8 of Katraul Panchayat and Ward No. 4 and 5 of Doghra Panchayat has been notified as Nagar Parishad, Jalley (Annexure-3) is most illegal and arbitrary manner and hereby the Respondents authorities may be directed to enforce Notification No. 3750 dated 28.12.2021 through which Ward No. 6, 7 and 8 of Katraul Panchayat and Ward No. 4 and 5 of Doghra Panchyat, Jalley was notified to be constituted where objection were also sought from the public under Section 5 of Bihar Municipal Act, 2007 and after consideration of all or any of objection, the final notification for constituted of Nagar Parishad, Dogra was to be done but in place of doing so the Notification No. 3750 dated 28.12.2021 (Annexure-3) has been cancelled by converting Nagar Parishad, Dogra to Nagar Panchyat, Dogra in most illegal and arbitrary manner and also in contravention to the provisions of Bihar Municipal Act, 2007.

And/or

Pass any other appropriate order/orders, writ/writs, direction/directions 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 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 which the petitioners 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 petitioners, 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* [*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 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, 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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	