

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4438 of 2022

1. Dr. Chandra Mohan Kumar Sinha S/o- Late Bhola Prasad Singh, R/o- Barheta Road, P.O.- Laheriasarai, P.S.- Bahadurpur, District- Darbhanga.
2. Dr. Ramakant Singh S/o- Raghunath Singh Ward No. 03, R/o- Saharu, P.O.- Ramna, P.S.- Hathauri, District- Samastipur.

... .. Petitioner/s

Versus

1. The Union of India through the Ministry of Ayush Government of India, New Delhi.
2. The Secretary (National Village- Health Mission) Ministry of Health and Family Welfare, Govt. of India.
3. The State of Bihar through the Additional Chief Secretary, Health Department, New Secretariat, Bihar, Patna.
4. The Director Ayush, Department of Health, Bihar, Patna, New Secretariat, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Adv
For the Respondent/s : Mr. Dr. K.N. Singh (ASG)

(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.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 15-04-2022

Heard learned counsel for the parties.

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

“A. A writ in the nature of mandamus or any appropriate writ/s, order/s, directions/s, commanding the respondents for the following reliefs:

i. To direct the respondents to appoint Ayush Doctor (Naturopathy) as much like Allopathic, Ayurvedic, Homeopathy and Unani Doctor in each of the primary

health centres and village health centres at Panchayat level as well as in the Additional Primary Health Centres. For which the Government of Bihar Health Department published gazette notification as per Article 309 of the Constitution of India for the appointment of Naturopathy doctor Ayush including Ayurved, Yoga and Naturopathy.

ii. To direct the State Government to advertise the post of Naturopathy Doctors in the State of Bihar as per notification No.794 dt.22.12.2010 published by the Health Department Government of Bihar where in the list of Ayush intended for Ayurved, Yoga and Naturopathy, Unani, Sidh and Homeopathy treatment system in the interest of public services.

iii. To direct the State Government to appoint at least one Naturopathy Doctor in each Primary Health Centres and Government Hospital such policy as per the demand of the nature & situation.

iv. To direct the State Government to engage the services of Naturopathy Doctors under NHRM Scheme and further to promote such Naturopathy Doctors, which is at present applicable in this COVID period and further to promote the Naturopathy Doctors at the Health Centres and further to provide recognition of naturopathy treatment in the State, it is further that the naturopathy treatment is a science of leading healthy life.

v. To direct the State Government or Union of India to establish recognition at Government level of Naturopathy and Yoga science in the present scenario of the country. It is the demand of the country to appoint such person expert in Naturopathy treatment like Allopathic, Homeopathy and other methods for all round development of the child, youth and people of the country, which was the Dream of National Father Mahatma Gandhi to include naturopathy treatment and grants its recognition. It is further to appoint at least one Naturopathy Doctors in every

Panchayat and grants its Government's Recognition of Naturopathy School, college etc. for fulfilment of the scheme of the Government and vision of the country.

vi. To establish the scheme for at least one Hospital meant for Yoga and naturopathy treatment, where the naturopathy is one of the most widely used methods in the present era. Now a days it is gaining popularity around the whole world as it is very safe and effective method of hilling which promotes home remedies for various ailments. It is all diseases are believed to be caused from what we eat and what we don't eat. So that the naturopathy is a very significant rule for the present era. The people of the nation believe in holistic and ayurvedic approach of treating people. The naturopathy and Yogasana is the foremost method of the treating people to lead the society lief as healthy and established by holistic approach.”

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 **respondent no. 3 Additional Chief Secretary, Health Department, New Secretariate, Bihar, Patna**, 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 on 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) 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 petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) 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;

(h) Liberty reserved to the petitioners 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, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA