

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5129 of 2022

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Sudhir Kumar @ Sudheer Kumar Jha Son of Babu Narayan Jha Resident of
Village - Benipur, Anchal - Benipur, P.S. - Behera, District Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer - In- Chief, Rural Works Department, Work Circle, Darbhanga.
3. The Superintending Engineer, Rural Works Department, Work Circle, Darbhanga.
4. The Executive Engineer, Rural Works Department, Work Division Benipur.
5. The Principal Chief Commissioner, State Tax, Bihar, Patna.
6. The Chief Commissioner, State Tax, Bihar, Patna.
7. The Joint Commissioner, State Tax, Patna Central Circle, Patna.
8. The Deputy Commissioner, State Tax, Patna Central Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C.11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-04-2022

Heard learned counsel for the parties.

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

- I. For issuance of direction to the respondent authorities of
Rural Works Department, Government of Bihar, Patna to
pay full amount of GST i.e. @ 12 % to the petitioner, as
the petitioner has successfully executed following eight

works and has paid taxes from his own pocket and the Executing Engineer, RWD, Works Division, Benipur vide his Letter No.693 Dated 09.07.2021 has already forwarded petitioner's application to the Superintendent Engineer, RWD, Works Circle, Darbhanga for taking final decision regarding payment of due amount of GST-

Serial No	Agreement No.	Name of Work
1.	24SBD/18-19 MMGSY (SC)	Construction of MMGSY Road with Batho Chowk to mallah toli Batho under MMGSY
2.	23 SBD/18-19 MMGSY (SC)	Construction of MMGSY Road with Ushrar to Batho Mushari under MMGSY
3.	Agreement No. 05 MBD/2017-18(MR)	Construction of Road with Maintenances from Bahera to Kalyanpur under MR
4.	25 SBD / 18-19 NABARD	Construction of MMGSY Road with Pauhadi state boring PWD sandak to Barma Jha Pokhar hote hue Jairawo State Highway TAK under NABARD
5.	6 MBD/17-18 (MR)	Construction of Road with Maintenance from Dharaura to Majampur Milki Road under MR
6	22 SBD/18-19 MMGSY(SC)	Construction of MMGSY Road with Madhya Vidyalay, Rariyam to Pakariya Tola, Rariyam under MMGSY
7	26SBD/18-19 MMGSY (SC)	Construction of MMGSY Road with Chamar Toli to Dhobiyahi under MMGSY

4. 8 ---	08/SBD/17-18 PMGSY	Construction of Road with Maintenance from LO28-TO3 to Goth South Tola
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II. For any other relief for which the petitioner may be deemed entitled to.

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 of the petitioner dated 02.07.2021 (Page No. 20).

Learned counsel for the respondents states that the said representation shall be considered and disposed of by the authority concerned within a period of two months from the date of production of a copy of this order before the authority concerned.

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.”

The instant petition stands disposed of on the following terms:-

- (a) The authority concerned shall consider and dispose of the representation of the petitioner dated 02.07.2021 (Page No. 20) expeditiously, preferably within a period of two months from the date of production of a copy of this order before him, by a reasoned and speaking order;
- (b) The order assigning reasons shall be communicated to the petitioner;
- (c) Liberty is reserved to the petitioner to take

recourse to such alternative remedies as are otherwise available
in accordance with law;

(d) 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;

(e) Liberty reserved to the petitioner to approach
the appropriate forum/Court, should the need so arise
subsequently on the same and subsequent cause of action;

(f) 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)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	