

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6327 of 2022

Mr. Aman Sethi S/o Late Shri Som Prakash Sethi having office at Plot No.182, Phase IV, Udyog Vihar, P.S. Udyog Vihar, Sector- 18, P.O.- Udyog Vihar, Phase IV, Gurgaon (Haryana)- 122015 and Residence at S-541, P.S.- C.R. Park and P.O.- Greater Kailash- II, Greater Kailash- II, New Delhi- 110048. Through Power of Attorney Holder Ramesh Prasad Singh, male, aged about 55 years approximately, Son of Sh. Ramyash Singh, Resident of Kanti Niwas, Batkhara Office, Shitla Mandir, Chiragora, P.O. and P.S.- Hirapur, District- Dhanbad, State- Jharkhand currently Residing at Road No.7 (Late House), East Patel Nagar, Near Gandhi Murti, Patna- 8000023, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
2. The Secretary, Mines and Geology Department, Government of Bihar, Patna.
3. The Director, Mines and Geology Department, Government of Bihar, Patna.
4. The Divisional Commissioner, Gaya Division, Gaya.
5. The Deputy Director, Mines and Geology, Magadh Circle, Gaya.
6. The District Magistrate-cum-Collector, Nawada.
7. The Assistant Director, Mines, Nawada.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sri Ram Krishna, Advocate,
For the Mines Dept.	:	Mr. Narersh Dikshit, Spl. P.P. Mines.
For the Respondent/s	:	Mr.Gyan Prakash Ojha (GA7)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-06-2022

Heard learned counsel for the parties.

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

- A. To issue an appropriate writ(s), order(s) or Direction(s) to the respondent authorities to grant permission to the petitioner to inter alia transport 1,21,500 Tonnes of stone Chips and 18,000 Tones of Dust which is lying in stock (stored) at the mining site at Mauja- Bhadokhara, Block No. 11, Khata No. 888, Plot No. 4256, Post Orhanpur, District- Nawada;
- B. To issue an appropriate writ(s), Oder(s) or Direction(s) to the respondent authorities to issue the requisite user ID (towards preparation of the Transport Challan/e-way bill) to the petitioner for the period between 11.06.2021 to 10.12.2021 so that the petitioner can undertake the transport of 28,08,090.00 cubic feet of stones for which he had been granted prior permission;
- C. To issue an appropriate Writ(s), Oder(s) or Direction(s) to the respondent authorities quashing the letter dated 03.09.2021, in which reference has been made to the letter dated 12.08.2021 as contained in Memo No. *1/Laghu khanan (store) 27/15-2204/M, Patna*, whereby the petitioner has been asked to only remove the plant and machinery and other temporary structures whining a period of 6 months;
- D. To issue an appropriate Writ(s), Oder(s) or Direction(s) to the respondent authorities quashing the letter dated 12.08.2021 as contained in Memo No. *1 /Laghu khana (store) 27/15-2204/M, Patna*, or in the alternative and without prejudice to the above to keep the same in abeyance till such time that the petitioner does not remove the already extracted ore in consonance with the judgment of the Hon'ble Supreme Court of India;
- E. To issue an appropriate Writ(s), Oder(s) or Direction(s) granting a further time period of six months to carry out the transportation of the extracted stones and dust in light with the judgments of the Hon'ble Supreme Court of India;
- F. To issue an appropriate Writ(s), Oder(s) or Direction(s) counting the period of 6 months that is available for removal of temporary structures from the mining site and removal of the extracted stones and dust from the date of grant of transit permits only and not from a date before the date of grant of transit permit;
- G. That in the alternative and without prejudice to the

above, to issue an appropriate Writ(s), Order(s) or Direction(s) to the respondent authorities to hear and decide the representation dated 15.11.2021 filed by the petitioner seeking permission for transportation of the already mined stone chips and dust; and

H. To pass ad-interim orders directing the State to maintain status quo with regard to the 1,21,500 Metric Tonnes of Stone Chips and 18,000 Tones of Dust and to not dispose of the same during the pendency of the present petition.

I. To pass any other appropriate Writ(s), Order(s) or Direction(s) that this Hon'ble Court may deem fit on the facts and in the circumstances of the case."

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioner, learned counsel for the petitioner, under instructions, states that petitioner shall be content if a direction is issued to the authority concerned i.e. **(Respondent No. 6, the District Magistrate-cum-Collector, Nawada)** 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 of it 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) Petitioner 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 petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) 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;

(h) 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;

(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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	