

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9864 of 2022

1. Manish Kumar Sri Ramchandra Prasad, R/o Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
2. Awdhesh Prasad S/o Late Munshi Mahto, R/o Village Mirabigha, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
3. Suman Kumar Singh S/o Late Balkishun Mahto, R/o Village Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
4. Naresh Prasad S/o Late Balkishun Mahto, R/o Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
5. Ashok Singh S/o Late Hardeo Singh, R/o Village Mirabigha, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
6. Praveen Kumar S/o Awdhesh Prasad, R/o Village Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
7. Lalan Prasad S/o Ramchandra Mahto, R/o Village Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad
8. Shivshankar Prasad S/o Late Shivrindan Mahto, R/o Village Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
9. Sonu Kumar S/o Madan Mistri, R/o village Ratan Bigha, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad
10. Munna Das S/o Late Boudhu Das, R/o Village Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
11. Avdhesh Prasad Singh S/o Late Hiranman Singh, R/o Village Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
12. Ramchandrar Prasad Singh S/o Late Dasrath Prasad, R/o Village Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
13. Rishi Kapoor S/o Lalan Prasad, R/o Village Mirabigha, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.
14. Naveen Kumar S/o Kamlesh Prasad, R/o Village Murgiachak, ward no. 19 Under Nagar Panchayat Ghoshi, P.S.- Ghoshi, Distt- Jahanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Panchayati Raj

Department, Old Secretariat, Bihar Patna.

2. The Chief Electoral Officer, Bihar State Election Commission, 3rd Floor, Beerchand Patel Marg, R-Block, Patna.
3. The District Magistrate, Jahanabad.
4. The District Panchayati Raj Officer, Jahanabad.
5. The Block Development Officer, under Block Ghoshi, Jahanabad.
6. The Block Panchayati Raj Officer, Jahanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ram Shankar Das, Advocate
For the Respondent/s	:	Mr.Subhash Pd. Singh (GA-3)
For the Respondent no.2	:	Mr. Girish Pandey, Advocate

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 : 22-07-2022

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, direction/directions, commanding the respondents with the following effects:-

- i. To direct the respondent's authorities not to include the revenue village, Ghoshi Tola Mirabigha in ward no. 19 under newly constituted Nagar Panchayat, Ghoshi because of that the village Ghoshi Tola Mirabigha revenue village already separate village as per survey map of Ghoshi having Thana No. 568, so that the authority without considering this aspect of the matter going to include Ghoshi Tola, Mirabigha in the ward no. 19 illegally contrary to the Grant Panchayat Raj Act & also does not come under the boundary (Parsiman) of Ward No. 19.

ii. To direct the respondents not to include the other members/voters of ward no. 18. village Ghoshi Toal Mirabigha in ward no.19 where irregularity committed by the B.D.O. Ghoshi including the same without obtaining the objection from the members of ward no. 19 and going to include the other voters in ward no. 19, it is stated that the revenue village Mirabigha is a separate village having in Thana No.563 having booth no. 173 of the ward no. 19 whenever village Ghoshi Tola Mirabigha in booth no. 174 On the basis of the number of voters already as per census 2011 having population 2009 whenever in ward no. 18, the voters 773 and population 1131, so that very basis by illegal means the local authority going to include the voters in the ward no. 19 on the interested people of the ward no. 18 where no objection was obtained to this effect.

B. Any other relief/s as your lordships may deem fit and proper in the facts and circumstances of the case.”

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)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.”

After the matter was heard for some time, learned counsel for the petitioners, under instructions, states that petitioner shall be content if a direction is issued to the **respondent no. 3, The District Magistrate, Jahanabad**, 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.

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;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	