

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10538 of 2022

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Umesh Kumar Nirala S/o Sidheshwar Prasad, R/o Ratan Bigha, P.S. Silao,
District- Nalanda, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development and Housing Depart. At Vikas Bhavan, Bailey Road, Patna - 800001
2. The Divisional Commissioner, Patna, Commissionaire Building, Patna, Near Golghar, Gandhi Maidan, Patna, Bihar 800001.
3. The District Magistrate, Nalanda, Collectorate Building, Biharsharif, At Nalanda, Bihar- 803101
4. The Managing Director-cum-Municipal Commissioner, Biharsharif, Biharsharif Smart City Limited (BSCL), 1st Floor, Administrative Building, Biharsharif Municipal Corporation, Biharsharif, Nalanda Bihar, 803101
5. The Project Manager, Smart City Project, 1st Floor Administrative Building, Biharsharif, Municipal Corporation Bihar Sharif, P.S. Bihar, Dist. Nalanda, Bihar 803101
6. The D.S.P. Traffic, Bihar Sharif, Kachahri Road, Biharsharif, At Nalanda, Bihar 803101

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-11-2022

Petitioner has prayed for the following relief(s):

“i. Praying for issuance of direction
to the Respondent Nos. 4 & 5 to provide DPR
and NIT Report of proposed construction of the
Fly-Over (as per News Papers, the length about
1.7 K.M. and width about 8.9 Meter) on the



Sadbhavana Marg (The Old Patna-Ranchi Road) under the scheme of 'Biharsharif Smart City Project,' to the Representative of the concerned Citizens.

ii. For praying for issuance accommodating direction at the end of the Respondent Nos. 4 & 5 for extending of initiation construction point of the proposed construction of Fly-Over at near the Sarkan Bus Stand (where the width of the road is ample near the Sarkan Bus Stand) and not from the Mazar, Accident Prone Area (Where the width of Road is very much narrow due to on-road old Mazar/Kabristan), which factually seems starting point of ongoing construction, constructing by the contractor with maximum disturbance tolerating by the local habitants.

iii. Praying for issuance of direction to take an effective action at the end of Respondent No. 6 for sake of citizens/commuters against, without taking into consideration of alternative Traffic way-out-route (Diversions) for Hardware-Hub Road and Banking-Hub Road of the Biharsharif City in course of expected prolonged construction time and against the complete blockage of said Road by the contractor of the proposed construction of Fly-Over.

iv. And for any other appropriate writ/writs order/s direction/s for which the petitioner would be found entitled under the facts and circumstances of the 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 petitioner, 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 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 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 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) Petitioner shall approach the authority concerned i.e. Respondent No.2, namely The Divisional Commissioner, Patna, 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;

The petition stands disposed of in the aforesaid



terms.

Interlocutory Application(s), if any, shall stand
disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

K.C.Jha/DKS

AFR/NAFR	
CAV DATE	
Uploading Date	11.11.2022
Transmission Date	

