

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10899 of 2022

Vikash Chandra @ Guddu Baba, S/o Late Ramashraya Prasad, R/o House No. 39 Road No. 12 Indrapuri, P.O.- Keshari Nagar, P.S.- Patliputra, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary.
2. The Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
3. The Additional Chief Secretary, Department of Revenue and Land Reforms Govt. of Bihar, Patna.
4. The Additional Chief Secretary, Department of Health, Govt. of Bihar, New Secretariat, Patna.
5. The Director in Chief (Administration), Health Services, Department of Health, Govt. of Bihar, New Secretariat, Patna.
6. The Divisional Commissioner, Darbhanga Division, Darbhanga.
7. The District Magistrate, Darbhanga.
8. The Principal, Darbhanga Medical College and Hospital, Darbhanga.
9. The Superintendent, Darbhanga Medical College and Hospital, Darbhanga.
10. The Secretary, Union Health and Family Welfare, Government of India, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Surendra Kumar Singh, Advocate
For the Respondent/s : Mr.S. D. Yadav (Aag 9)

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 : 05-08-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

(I) To issue an appropriate writ, order or direction to the respondent not to transfer almost entire of the land acquired / marked for the establishment of

Darbhanga Medical college and Hospital (herein after referred to as DMCH) , Darbhanga to any other agency for establishment of an unit of All India Institute Of Medical Sciences ,Darbhanga .

(ii) Alternatively in the larger public interest of the people of North Bihar generally and Darbhanga Town specially, it is most respectfully prayed that if the first prayer in any case is not possible, then at least 50 acres of land out of admitted 227 acres of DMCH be allowed to be under the control of the DMCH, for the smooth and proper running of the prestigious oldest Government Medical College and Hospital Of Bihar Hospital of Bihar , popularly known as DMCH.

(iii) To issue further appropriate writ, order or direction to the respondents to improve the conditions of the existing buildings as well as the infrastructure of the DMCH, Darbhanga.

(iv) This Hon'ble Court may adjudicate and hold that it was the statutory duty of the Respondent Authorities to consider necessity of existence and the prime

importance of the institution as it (DMCH) is the oldest Government Medical College and Hospital of Bihar.

(v) This Hon'ble Court may further adjudicate and hold that Respondents have erroneously decided to transfer 202 acres of DMCH land out of only 227 acres of land to the proposed AIIMS, Darbhanga.

(vi) This Hon'ble Court may further adjudicate and hold that the Respondents were duty bound to see that by sparing 50 acres of land to the DMCH , Darbhanga entire existing buildings and structures is saved resulting in saving a huge Public Money amounting to about FIVE HUNDRED CRORES as it is a property of the state.

(vii) To award any other relief or reliefs as this Hon'ble Court may deem fit and proper in the light of the facts of this 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 petitioner, under instructions, states that petitioner shall be content if a direction is issued to the respondent no.4, **namely, The Additional Chief Secretary, Department of Health, Govt. of Bihar, New Secretariat, Patna** 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.

As such, petition stands disposed of on 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;

The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.08.2022
Transmission Date	NA