

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10988 of 2022**

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Satish Kumar Sharma S/o Late Vinay Sharma Village and Post- Saday Bigha,  
P.S.- Barahaiya, District- Lakhisarai, Pin- 811302 (Bihar).... .. Petitioner/s  
Versus

1. The Hon'ble Chancellor of Universities of Bihar through the Principal Secretary, Governor's Secretariat, Bihar, Raj Bhawan, Patna- 800022.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.- 800015.
3. The Additional Chief Secretary, Education Department, Government of Bihar, Vikas Bhawan, New Secretariat, Patna- 800015.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Satish Kumar Sharma ( In Person )  
For the Respondent/s : Mr.Jitendra Kumar Roy 1 ( Sc 13 )

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**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 relief:-

- (a) To issue an appropriate direction / order to the Respondent – 1, the Hon'ble Chancellor of Universities Bihar, to change the nomination of members nominated under sub section 2 of section 10 of the Aryabhatta University Act, 2008 in the present search committee constituted by him for appointment of Vice-Chancellor in Aryabhatta Knowledge University, Patna, as the nomination of members in the present search committee is in violation of law provisioned in the Section – 3 ( c) Chapter-I of the Statutes of the university and also against the mandate of Hon'ble Patna High Court in para – 7(ii) in the judgment and order of 18<sup>th</sup> December 2015 in CWJC No. 16680 of

2014. One of the members Dr. Samarendra Pratap Singh nominated by the Hon'ble of Chancellor of Universities of Bihar, is an Ex- Vice-Chancellor i.e. Ex.- employee of the University that is in violation of Section – 3 (c) chapter-I of the Statutes of the University, another member –cum – convener Prof. Ram Bachchan Rai nominated by the State Government, is a member of The Court (one of the authorities) of the University that is in violation of the mandate of the Hon'ble Patna High Court in para – 7(ii) in

the judgment and order of 18<sup>th</sup> December 2015 in CWJC No. 16680 of 2014 and one member Prof. Girish Kumar Chaudhary, Vice-Chancellor, Patna University, is an Ex.- member of the Finance Committee (one of the authorities) of the University. Earlier he was also a member of the Affiliation & new teaching programme Committee, the Board of Affiliation of the University and also he was a member of many inspection teams (constituted for affiliation matter) of the University. This is also in violation of the mandate of this Hon'ble Court in para – 7(ii) in the judgment and order of 18<sup>th</sup> December 2015 in CWJC No. 16680 of 2014. More over a FIR is also pending against Prof Girish Kumar Chaudhary when he was Pro Vice-Chancellor in Patliputra University, Patna.

(b) To issue writ of mandamus to direct the Respondent No.-1, the Hon'ble Chancellor of Universities, Bihar to ensure fierily and transparency in the ongoing process of selection and appointment of Vice-Chancellor in Aryabhatta Knowledge University, Patna Bihar as per the direction of the Apex Court in Civil Appeal No. 6831/2013 (arises out from S.L.P. (C ) No. 8066/2013) 'Ram Tabakya Singhv The State of Bihar and Others ' and published in Bihar Gazette (Extra Ordinary) dated 27.08.2015, Annexure- as the ongoing appointment process is not in a transparent mode, such as a meeting of search committee was held on ~~14~~<sup>19</sup>.05.2022 but till no credentials of short-listed candidates have<sup>not</sup> been uploaded on website of Chancellors office, on

23.07.2022 interaction has been fixed but till date list of successful and un success candidates have been uploaded on website of Chancellors office. The list must me uploaded so that every co – applicants citizen and person interested in Higher Education may be satisfied about the fairness of selection and suitability of candidates;

(c) To issue an appropriate direction / order to the Respondent – 1, the Hon'ble Chancellor of Universities Bihar, to hold the process of appointment of Vice-Chancellor of Aryabhatta Knowledge University, Patna, that is short listing, interaction, selection as nomination of members in search committee is not as per law and the ongoing process of appointment is not in transparent mode, and the post of Vice-Chancellor is a highest post of integrity in Higher Education.

(d) Other relief / reliefs which may be reasonable and proper in the fact 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 petitioner, under instructions, states that petitioner shall be content if a direction is issued to the respondent no.3, **The Additional Chief Secretary, Education Department, Government of Bihar, Vikas Bhawan, New Secretariat, Patna- 800015** 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/-

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| <b>AFR/NAFR</b>          | NAFR       |
| <b>CAV DATE</b>          | NA         |
| <b>Uploading Date</b>    | 08.08.2022 |
| <b>Transmission Date</b> | NA         |