

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11259 of 2022

Parmar Enterprises represented by its Partner, Kripa Kant Singh, Age-50 years, Gender-Male, S/o Ramashish Singh, R/o Ward No.-12, Chilwaniya, Motihari-845401 at and P.O.-Vil and Post-Balua, P.S.-Paharpur, Dist-East Champaran-845422.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Work Department, Bihar, Bishweshraiya Bhawan, Bailey Road, Patna.
2. The Engineer-in-Chief cum Commissioner cum Special Secretary, Rural Work Department, Bihar, Bishweshraiya Bhawan, Bailey Road, Patna.
3. The Chief Engineer-3, R.W.D., Bishweshraiya Bhawan, Bailey Road, Patna.
4. The Superintendent Engineer, Work Circle, East Champaran.
5. The Executive Engineer, R.W.D. Work Division-Areraj/Raxsaul.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the Respondent/s	:	Mr. Kameshwar Pd. Gupta, GP-10
		Mr. Satya Vrat, AC to GP-10

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 15-11-2022 Heard learned counsel for the parties.

Petitioner has prayed for following relief (s):-

“a. For issuance of a writ in the nature of mandamus commanding the respondents to quash the illegal debarment order no. मू० अ०-4 (मु०) डीबार -33-59/2021 1966(अनु०) पटना दिनांक-07.07.2021 which was issued by the respondents without any notice and knowledge the petitioner which is violation of departmental circular and order of Hon'ble court in respect to the agreement no. agreement no-05 SBD/18-19 dt-



24.05.2018 for Rs.6,52,46,790.00 dt-24.05.2018 and 21, SBD/2017-18 dt-17.11.17 for Rs. 2,21,57,577.00.

b. For restraining the respondents to not disqualify the petitioner's bid due the illegal debar order without notice and knowledge because the petitioner completed the work within time extended period which was sanctioned earlier

c. For granting any other relief/reliefs for which the petitioner may be found entitled in the eye of law.”

After the matter was heard for some time, finding the Bench not to be in favour with the submissions made across the Bar, learned counsel for the petitioner, under instructions, seeks permission to withdraw the present petition reserving liberty to approach Respondent No. 2, namely, the Engineer-in-Chief, cum Commissioner cum special Secretary, Rural Work Department, Bihar, Bishweshraiya Bhavan, Bailey Road, Patna by filing a representation for redressal of the grievance(s).

Liberty, as prayed for, is granted.

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.”

Present petition stands disposed of as withdrawn on the following terms:-

(a) Petitioner shall approach the authority concerned i.e. Respondent No. 2, namely, the Engineer-in-Chief, cum Commissioner cum special Secretary, Rural Work Department, Bihar, Bishweshraiya Bhavan, Bailey Road, Patna within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The said authority shall consider and dispose it of expeditiously by passing a reasoned and speaking order preferably within a period of three 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) Also, liberty reserved to the petitioner to approach the 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 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, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

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