

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15623 of 2022

Chand Khan @ Ruhullah Khan son of Late Kalimullah Khan, resident of Mohalla Nauhatta, P.S. Nauhatta and District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development and Housing Department, Bihar.
2. Secretary State Election Commission, Bihar, Patna.
3. District Magistrate cum District Election Officer (Municipality), Saharsa.
4. Nodal Officer (Municipality) cum Deputy Development Commissioner, Saharsa.
5. District Panchayati Raj Officer, Saharsa.
6. Block Panchayati Raj Officer Nauhatta District Saharsa.
7. Block Development Officer Nauhatta cum Assistant returning officer Nauhatta.
8. Circle Officer Nauhatta cum Assistant returning officer Nauhatta.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Advocate
For the Respondent/s : Mr. Yogendra Pd. Sinha (AAG 7)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 18-11-2022

Petitioner has inter alia prayed for following relief (s) : -

“(i) That for issuance of appropriate writ, order or direction or writ in the nature of certiorari quashing the Memo No.159 dated



06.09.22 communicating the Prapatra-10 arrived on the basis of Prapatra-6 (Annexure-1) in which entire data concerning numbers of Voters, numbers of Schedule Caste Voters & numbers of Schedule Tribes in each constituencies is fake & planted on the basis of documents herein enclosed.

(i) That for issuance of appropriate writ, order or direction or writ in the nature of quashing the Prapatra-7 prepared on the basis of fake data Projected by Prapatra-6 (Annexure-1) since the same was prepared in contravention with Section 12(2) & Rule 29 & 30 of Bihar Municipal Election Rules 2007 since the Divider number 27386 is wrong while the actual Divider shall be 17585 only i.e. the actual Total Numbers of Voters likewise the divider number 4074 is wholly wrong since the Total numbers of Schedule Caste Voters is 2588 as such entire calculation is wrong as such paragraph -7 prepared on the basis of fake data prepared by the respondents is liable to be set aside.

(iii) That for issuance of appropriate writ, order or direction or writ in the nature of mandamus commanding the Respondents to prepare a fresh **Prapatra-6** with true Data & prepare a Chart Prapatra-8 & 9 with the population of Schedule Caste & Schedule Tribes in descending order as prescribed under Rule-29 & 30 to Bihar Municipal Election Rules. & then prepare Prapatra 10 afresh according to law but on the basis of actual data, fact 8 & figures.

(iv) That for issuance of appropriate writ, order or direction or writ in the nature of mandamus commanding the Respondents to **reserve the ward/Constituency for Schedule Caste having highest Population of Schedule Caste in the ward/Constituency** as provided under Rule-29 & 30 **to Bihar Municipal Election Rules** as such suitable direction in this regard may kindly be given to the respondents.

(v) That for issuance of appropriate writ, order



or direction or writ in the nature of mandamus commanding the Respondents to divide the ward No.8 into suitable numbers of wards as per the Provisions of Bihar Municipal Act since the formation of ward/constituencies was made on the basis of whim & fancy desire of the state election Commission since ward No.4 has only 401 Voters in the ward (206 Male & 195 Female) (1538 was wrongly shown in prapatra-6 Annexure-1) while ward No.8 have 2502 actual Voters (1276 Male & 1226 Female) (1611 was wrongly shown in prapatra-6 Annexure-1) as such the false break-up given in Prapatra-6 (Annexure-1) make the entire exercise of election as farce as such suitable direction in this regards make kindly be given according to Rule-29 & 30 **to Bihar Municipal Election Rules.**

(vi) That for issuance of appropriate writ, order or direction or writ in the nature of mandamus commanding the Respondents not to reserve **ward No.10 & 12 having no Schedule Caste Voters at all** likewise there is few voters of Schedule Caste Voters in ward No.11 even as per Law reserving ward No.10, 11 & 12 shall be highly illegal & is against **Rule-29 & 30 to Bihar Municipal Election Rules.**

(vii) That for issuance of appropriate writ, order or direction or writ in the nature of mandamus commanding the Respondents to investigate the issues raised by the petitioner & in case it is found that the entire numbers of Voters displayed is fake, entire numbers of Schedule Caste Voters is fake as also the numbers of Schedule Tribes Voters is fake as such in case it is found that the respondents prepared **Prapatra-7** (Annexure-2), **Parapatra-8** (Annexure 3) **Prapatra-9** Annexure- 4) & **Prapatra- 10** (Annexure-5) with wholly fake, fabricated & inaccurate numbers of Schedule Caste, Schedule Tribes, & other Voters in descending orders as prescribed under Rule-29 to **Bihar Municipal Election Rules** as such declare that the entire election process vitiates as such



countermand the entire election process undertaken on wholly fake, fabricated & Inaccurate numbers of schedule Caste, Schedule Tribes, & other Voters & a register FIR against the responsible & departmental proceeding against them may kindly be initiated against the best responsible person.

(viii) That for issuance of appropriate writ, order or direction or writ in the nature of mandamus commanding the Respondents to punish those officers & register FIR against those responsible for the entire bungling & who intentionally usurped the democratic aspiration of General Caste Voters of Ward No.10, 11 & 12 since those officers are incompetent having malicious caste consideration in mind as such responsible be punished suitably.

(ix) That for grant of any other relief or reliefs to which the petitioner be found entitled in law be granted to them.”

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 [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.3, namely District Magistrate
cum District Election Officer (Municipality)
Saharsa, 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/chn

AFR/NAFR	
CAV DATE	
Uploading Date	21.11.2022
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