

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20017 of 2021

1. Pradip Kumar Choudhary Son of Devchandra Choudhary Resident of Village - Paghari, P.S. - Baheri, District- Darbhanga.
2. Satrugan Mahto S/o late Ram Sundar Mahto r/o Village Baheri PS Baheri, District Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary Cum Principal Secretary Urban Development and Housing Department Government of Bihar, Patna.
3. The Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
5. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
6. The Diecotr, Panchayati Raj Department Government of Bihar, Patna.
7. The Collector cum District Magistrate, Darbhanga.
8. The District Panchayati Raj Officer, Darbhanga.
9. The Sub Divisional Officer, Biraul, Darbhanga.
10. The Block Development Officer, Biraul Darbhanga.
11. The Circle Officer, Biraul, Darbhanga.
12. The Chief Election Commissioner, Bihar Sone Bahwan, Patna.
13. The Secretary, State Election Commission, Bihar, Sone Bhawan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vinay Kumar Mishra, Adv
For the Respondent/s : Mr.Subhash Prasad Singh (GA3)

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 : 06-01-2022

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

“That this application is being filed in the nature of Public Interest Litigation for issuance of writ in the nature of certiorari or any other appropriate writ/rule/direction quashing memo No. 4224 dated 25.12.2020 (Annexure-4) whereby and whereunder notification no. 6049 dated 11.09.2017 has been cancelled and also the Memo No. 4260 dated 25.12.2020 whereby and whereunder Parishad, Baheri has been converted into Nagar Panchayat, Baheri only with a view to include east and west on village Baheri and thereby Nagar Parishad, Baheri has been converted into Nagar Panchayat, Baheri only by adding village Baheri on the intervention of the local politicians and thereby in exercise of power under section 3(1)(a),(4), (5), (6) and (8) Nagar Panchayat Baheri has been notified by including only village Baheri by Memo NO. 989 dated 03.03.2021 (Annexure-6) in most illegal and arbitrary manner and thereby the respondent authorities may be directed to enforce Notification No. 6049 dated 11.09.2017 through which Nagar Parishad Baheri was notified to be constituted where objection were also sought from the public under section 5 of Bihar

Municipal Act, 2007 and on expiry of one month from the date of publication of Notification under section 4 and after consideration of all or any of objection, the final notification for constitution of Nagar Parishad, Baheri, was to be done but in place of doing so the notification No. 6049 dated 11.09.2017 (annexure-2) has been cancelled by converting Nagar Parishad, Baheri into Nagar Panchayat, Baheri in most illegal and arbitrary manner and also in contravention to the provision of Bihar Municipal Act, 2007.”

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.”

After the matter was heard for some time, learned counsel for the petitioners, under instructions, states that petitioners shall be content if a direction is issued to the authority concerned to consider and decide the representation which the petitioners 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 petitioners, 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 in the following terms:-

(a) Petitioners 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) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(d) Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise

available in accordance with law;

(e) We are hopeful that as and when petitioners take 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;

(f) Liberty reserved to the petitioners to approach the Court, if the need so arises subsequently on the same and subsequent cause of action;

(g) Liberty also reserved to the petitioners to make a mention for listing of the petition on priority basis. As and when any such mention is made, Registry shall take steps for listing the petition at the earliest.

(h) We have not expressed any opinion on merits.
All issues are left open;

(i) The proceedings, during the time of current Pandemic- Covid-19 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, stands
disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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