

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20994 of 2021

1. Anil Prasads Son of Brahmdeo Prasad Resident of Village- Vishunpura, P.O.- Damodarpur, Gram Panchayat- Vishunpura, P.S.- Pipra, District- East Champaran at Motihari.
2. Sudhanshu Kumar Son of Shambhu Bhangat Resident of Village and P.O.- Raghunathpur, P.S.- Rajpur, Gram Panchayat- Raghunathpur, District- East Champaran at Motihari.
3. Ashutosh Anal Son of Late Narmdeshwar Pandey Resident of Village and P.O.- Basai, P.S.- Janta Bazar, District- Saran at Chapra.
4. Rajeshwar Singh Son of Nagnarayan Singh Resident of Village- Gopalpur, Gram Panchayat- Gopalpur, P.O. and P.S.- Pachrukhi, District- Siwan.
5. Rajeev Kumar Son of Gajadhar Singh Resident of Village- Nauranga, Gram Panchayat- Tarwara, P.O.- Tarwara, P.S.- Tarwara (G.B. Nagar), District- Siwan.
6. Rameshwar Yadav Son of Huro Yadav Resident of Village- Chhachhudih, P.O. Chakai, P.S. Chakai, District- Jamui.
7. Sukesh Kumar Singh Son of Harifa Singh Resident of Village- Fingi, P.O. and P.S. Bihiyan, District- Bhojpur at Ara.
8. Ramkripal Thakur Son of Sri Saroj Thakur Resident of Village- Pipra, P.O. Darpa, P.S. Darpa, District- East Champaran at Motihari.
9. Ramesh Yadav Son of Bhogi Yadav Resident of Village- Navtoli, Gram Panchayat- Gajhara, P.O.- Gajhara, P.S.- Ladania, District- Madhubani.
10. Anil Singh Son of Late Parmeshwar Singh Resident of Village- Akuchak, P.O. Rajdhani, Gram Panchayat Raj, Pacharaur, P.S. Taraiya, District- Saran at Chapra.
11. Kameshwar Rai Son of Hardeo Rai Resident of Village and P.O. Pakari Basarat, P.S.- Sahebganj, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Panchayati Department, Government of Bihar, Patna.
3. The State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner.
4. The State Election Commissioner, The State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna.
5. The Secretary, The State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna.
6. The District Magistrate-cum-District Election Officer (Panchayat), East Champaran at Motihari, District- East Champaran at Motihari.
7. The District Magistrate-cum-District Election Officer (Panchayat), Saran at Chapra, District- Saran at Chapra.

8. The District Magistrate-cum District Election Officer (Panchayat), Siwan, District- Siwan.
9. The District Magistrate-cum District Election Officer (Panchayat), Jamui, District- Jamui.
10. The District Magistrate-cum District Election Officer (Panchayat), Bhojpur at Ara, District- Bhojpur at Ara.
11. The District Magistrate-cum District Election Officer (Panchayat), Madhubani, District- Madhubani.
12. The District Magistrate-cum District Election Officer (Panchayat), Muzaffarpur, District Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Awnish Kumar, Advocate
For the Respondent/s : Mr.Ajay (G.A. 5)

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 : 10-01-2022

Heard learned counsel for the parties.

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

(I) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent State Election Commission to call for the C.C. TV. Footage and the compact disc of videography of the counting of votes and for coming to a conclusion as to whether the counting of votes in the petitioners' territorial constituency was conducted in a free and fair manner in the presence of the candidates and their Counting Agents in all the Counting Tables and if not whether such elections fulfills the pre-requisites of a free and fair election in the eye of law.

(II) For issuance of an appropriate writ in the

nature of MANDAMUS, commanding and directing the Respondent State Election Commission to countermand the election of the petitioners' territorial constituency on account of gross illegality committed by the Returning Officers and the voters associated with the counting of votes of the petitioners' territorial constituency when they had counted the votes polled through the Electronic Voting Machine either without any announcement regarding counting of their territorial constituency for the purposes of counting and/or before the arrival of the candidates and their Counting Agents were detained by the administration.

(iii) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent State Election Commission to hold Panchayat Election in the State only after complying the mandatory requirements of Rules-46 and 48 of the Bihar Panchayat Election Rules, 2006 which provides for appointment of Polling Agents by all the contesting candidates for each Polling Station in their territorial constituency and for appointment of Counting Agents by each contesting candidates for all the Counting Tables in the Counting Hall.

(IV) For a declaration that if the polling in any election is held without granting liberty to the candidates for appointment of sufficient number of Polling Agents for all the polling booths of their territorial constituency, the poll so held is not a free and fair poll in the eye of law and similarly, if the candidates are not allowed for appointment of sufficient number of Counting Agents for each Counting Tables set out in the Counting Hall for counting of votes of a particular territorial constituency, there is no free and fair counting in the eye of law and therefore, even if an election has been held and the certificate of election has been issued in favour of a candidate contesting the election, his election is fit to be declared void, ab initio even without entering into the arena of disputes facts.

(v) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent State Election Commission to recall its revise instruction regarding number of Counting Agents to be appointed by each candidate issued under letter no. 4998 dated 06.10.2021 and allow the candidates or their Election Agent for appointment of sufficient number of Counting Agents proportionate to the number of Counting Tables set out in the Counting Hall for the purposes of counting of votes of a particular territorial constituency and only thereafter to proceed with counting of votes for declaration of result of election.

VI. For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the Respondent State Election Commission to take suitable action against the erring officials blacklisting them from conduct of any future election in the State, if on scrutiny of visuals of the C.C. TV. Footage and the compact disc of videography, the State Election Commission comes to a conclusion that the counting of votes were concluded behind the back of the candidates and/or their Counting Agents for any reason whatsoever including the declaration regarding counting of votes of a particular territorial constituency on the public address system installed at the main gate of counting premises for the purposes of information to the candidates and their Counting Agents if under the detail schedule of election though the date of counting was fixed however as per the instruction of State Election Commission, there was no time fixed for counting of votes of a particular territorial constituency and it was to be taken up by the Returning Officer in the descending serial number of territorial constituency.

(VII) For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts 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)

“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 i.e. (Respondent No. 3, the State Election Commission (Panchayat), 3rd Floor, Sone Bhawan, Birchand Patel Path, Patna through the State Election Commissioner) 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 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 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) We have not expressed any opinion on merits. All issues are left open;

(h) 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)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	