

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21025 of 2021

1. Suranjan Kumar, Son of Ablakh Ray Resident of Village - Shekhpura Neerpur, P.S. and Block - Rajapakar, District- Vaishali at Hajipur.
2. Rekha Devi Wife of Pramod Kumar Resident of Village - Gangajal, Ward No. 4, P.S. and Block - Rajapakar, District- Vaishali at Hajipur.
3. Md. Shaukat Ansari Son of Md. Nazir Ali Resident of Village - Bakarpur, Ward No. 6, Near Masjid, P.S. and Block - Rajapakar, District- Vaishali at Hajipur.
4. Ranjeet Kumar Kaushal Son of Devki Ray Resident of Village - Shekhpura Near Shiv Temple, Ward No. 1, P.S. and Block - Rajapakar, District- Vaishali at Hajipur.

... .. 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) Vaishali at Hajipur, District- Vaishali at Hajipur.
7. The Block Development Officer, Rajapakar - cum- Returning Officer, Panchayat Election, 2021, Gram Panchayat Raj, Bakarpur, District- Vaishali at Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rakesh Ranjan, Advocate
For the Respondent/s : Mr.Ajay (GA5)

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 with respect to counting of votes in the post of Mukhiya of Gram Panchayat Raj, Kakarpur (Territorial Constituency No. 13) from the Respondent nos.6 and pass necessary orders in exercise of its power under Section 123 of the Bihar Panchayat Raj Act, 2006, if after the scrutiny of C.C. TV Footage of counting it is found that no counting in the its mentioned constituency had taken place in the presence of the candidates of their Counting Agents, yet the result of election was declared and certificate of election was issued in favour of a candidate contesting the election .

(II) For a declaration that if the result of an election has to be declared only after the counting of votes in the manner prescribed under the relevant Rules and the instructions issued by the State Election Commission, any declaration of result without counting of votes in the manner prescribed is not a declaration in the eye of law and, therefore, such declarations of result cannot be sustained.

(III) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the Respondent State Election Commission to countermand the election in the abovementioned three constituencies , if after the scrutiny of C.C. TV. Footage of the process of it is found that there was no counting of votes in the abovementioned three Constituencies in the presence of the or their Counting Agents and go for fresh poll in accordance with law but only after bringing suitable amendments under Bihar Panchayat Election Rules, 2006 regarding appointment of sufficient number of Counting Agents for keeping watch on the process of counting proportionate to the Counting Tables, so declared for counting of votes in a particular territorial constituency.

(IV) For issuance of an appropriate writ in the nature of **MANDAMUS**, commanding and directing the 1 to 5 to take action against the erring Officers entrusted with the task of counting of avovementioned three constituencies if after scrutiny of C.C. TV. Footage of the process of counting, it comes to their light that the result of election was declared without counting of votes in presence of the candidates or their Counting Agents in violation of the provisions of the Bihar Panchayat Election Rules, 2006 and the detail instructions issued by the State Election Commission through its Hand Book for instruction regarding counting, 2021, soft copy whereof was sent to all the District Election Officers (Panchayat) -cum- District Magistrate, Bihar vide letter no.3285 dated 25.08.2021.

(V) 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 petitioner, under instructions, states that

petitioner shall be content if a direction is issued to the authority concerned (**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 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 three 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) 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 three 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 petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(e) 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;

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

(g) Liberty also reserved to the petitioner 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)

Rajiv/veena-

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