

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21229 of 2019

Mr. Nikhil Jaiswal Son of Harish Chandra Choudhary Resident of Village-
Paroo Police Station-Paroo, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. the Engineer-in-Chief-Cum-Additional Commissioner-Cum-Special Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Superintending Engineer, North Bihar Road Division, Muzaffarpur.
4. The Executive Engineer, Road Division, Road Construction Department, Muzaffarpur.
5. The Assistant Engineer, Road Division, Muzaffarpur.
6. The Junior Engineer, Road Division, Muzaffarpur.
7. The Collector-cum-District Magistrate, Muzaffarpur.
8. The District Arm Magistrate, Muzaffarpur
9. The Circle Officer, Paroo, Muzaffarpur.
10. Hindustan Petroleum Corporation Limited represented through its Territory Manager (Retail), Muzaffarpur.
11. The Head of Regional Office, Begusarai Retail Regional Office, Hindustan Petroleum Corporation Ltd.
12. The Deputy Manager, Sales Retail Muzaffarpur Territory, Hindustan Petroleum Corporation Limited.
13. The Duly Constituted Attorney, TM (Retail), Muzaffarpur, Hindustan Petroleum Corporation Limited.
14. Kumari Rubi Sinha, Wife of Vivek KUMar, Resident of Neknampur, P.S.-Dewariya, District-Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Niranjana Kumar, Advocate Mr. Kunal Kishor, Advocate Mr. Avinash Raushan, Advocate Mr. Ranjan Kumar Singh, Advocate
For the Respondent/s	:	Mr. Manoj Kr. Ambastha, SC-26 Mr. Neeraj Kumar Gupta, Advocate Mr. Rajeev Prakash, Advocate

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



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-12-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- (i) For issuance of writ in the nature of certiorari for quashing the letter dated 12.07.2019 vide Ref. No. 15456465849472 issued by the Head of Regional Office, Begusarai Retail Regional Office, Hindustan Petroleum Corporation Ltd. whereby and where under the candidature of the petitioner for award of Retail Outlet Dealership at within 1 KM from Neknampur Middle School towards Zafarpur on LHS District- Muzaffarpur under Open Category, application advertized on 25.11.2018 has been cancelled in a very mechanical manner without appreciating the fact and circumstances as well as in teeth of the provisions of law. Although, this petitioner has been declared as successful candidate in the Bid opening conducted on 27.06.2019 for selection of the R.O. Dealership at the subject location.



- (ii) For issuance of writ in the nature of certiorari for quashing of the operation/action of the Hindustan Petroleum Corporation Limited (hereinafter referred to as the Corporation) for award of Retail Outlet Dealership at the proposed location in which one Kumari Rubi Sinha bearing application form no. 15454506315826 has illegally and arbitrarily been selected by the Corporation in place of this petitioner who has duly been selected for award of retail outlet dealership for the proposed site at within 1 KM from Neknampur Middle School towards Zafarpur on LHS District MUZAFFARPUR under OPEN category Advertised on 25-Nov-2018 and also to cancel the candidature of Kumari Rubi Sinha, who has illegally and unwarrantly been selected for award of R.O. Dealership at the proposed location under the District of Muzaffarpur under Open Category advertised on 25.11.2018.
- (iii) For issuance of writ in the nature of mandamus for directing the responsible respondent authorities to consider the candidature of the petitioner for award of R.O. Dealership at proposed location and also receive Initial Security Deposit and the specified



document from the petitioner and in pursuance of the same issue Letter Of Intent (LOI) in favour of the petitioner for which entitled to.

- (iv) During the pendency of this writ application, operation of the impugned action of the Corporation for award of R.O. Dealership at within 1 KM from Neknampur Middle School towards Zafarpur on LHS District Muzaffarpur under Open Category may be stayed.
- (v) For any other relief/reliefs to which the petitioner is entitled for.

After the matter was heard for some time, finding the Bench not to be in favour of 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. 11 for redressal of the grievance(s).

Permission 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.”

The present petition stands disposed of as withdrawn with the following liberty/observation/direction:-

(a) Petitioner shall approach the authority concerned i.e. Respondent No. 11, namely The Head of Regional Office, Begusarai Retail Regional Office, Hindustan Petroleum Corporation Ltd. for redressal of the grievance(s);

(b) As and when any such request is received, the said authority shall consider and dispose of the same 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;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	13.12.2022
Transmission Date	

