

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2936 of 2020

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1. Prem Kumar Choudhary, Son of Sri Daya Nath Choudhary, resident of R-3, A-3/12, Mohan Garden Uttam Nagar, P.S. Mohan Garden, District- Delhi.
 2. Shankar Modi @ Shankar Saw, Son of Ram Kishun Moddi, resident of Amerdeep Nagar, Dhelwan, P.S.- Ram Krishna Nagar, District- Patna.
 3. Bibhuti Kumar Tiwari, Son of Nagendra Prasad Tiwari, resident of near bus stand, Indiranagar road no. 7 a postal park, Phulwari, P.S. Kankarbagh, District- Patna.
 4. Ashok Varai, Son of Basudev Varai, resident of Ward no. 1, Bihar 1, road Kachaharipar, Indaut, P.S. Hilsa, District- Nalanda.
 5. Arvind Chourasia, Son of Ramdev Chourasia, resident of Village- Korawan, P.S. Chicksoura, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Urban Development and Housing Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Patna Municipal Corporation through Municipal Commissioner, Patna.
5. The Sub-Divisional Officer, Sadar, Patna.
6. The Senior Superintendent of Police, Patna.
7. The Superintendent of Police, East Patna, Patna.
8. The Station House Officer, Jakkanpur, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Shilpi Keshri, Advocate Mr. Anand Vardhan, Advocate
For the Respondent/s	:	Mr. Yogendra Prasad Sinha, AAG-7 Mr. Prasoon Sinha, Advocate Mr. Bindhyachal Singh, Sr. Advocate Mr. Satya Prakash, Advocate Mr. Vipin Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-09-2022



Heard learned counsel for the parties.

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

1. That the present writ petition has been filed for issuance of writ in nature of mandamus for commanding the authorities of the Municipal Corporation including the Municipal Commissioner directing upon the respondents to grant/renewal of their license to carry out business at the Inter State Bus Stand , Bairiya in the town and District of Patna and for issuance of any other writ/writs, order/orders, direction/directions as this Hon'ble Court may deem fit and proper as the facts and circumstances of this case.

After the matter was heard for some time, finding the Bench not to be in favour with the submissions made across the Bar, 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.

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) Petitioners shall approach the authority concerned i.e. Respondent No.4, namely the Patna Municipal Corporation through Municipal Commissioner, Patna within a period of four weeks from today by filing a representation for redressal of the grievance(s). However, should the said respondent not having any jurisdiction, in that event, it shall be open for the petitioners to approach respondent no.3, namely, the District Magistrate, Patna;



(b) The said authority shall consider and dispose it of expeditiously by passing a reasoned and speaking order preferably within a period of four weeks 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 petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) 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;

(h) Also, liberty reserved to the petitioners 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)

(S. Kumar, J)

Amrendra/Anjani

AFR/NAFR	
CAV DATE	
Uploading Date	29.09.2022
Transmission Date	

