

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18080 of 2022

1. Rajesh Kumar Mishra Son of Late Mithilesh Mishra @ Mithalesh Mishra Resident of Village Mohanpur, P.O.- Ratanpur, P.S.- Singhwara, District- Darbhanga.
2. Kalewar Paswan, Son of Chaitu Paswan Resident of Village Mohanpur, P.O.- Ratanpur, P.S.- Singhwara, District- Darbhanga.
3. Lal Paswan, Son of Shivjee Paswan Resident of Village Paira, P.O.- Ratanpur, P.S.- Singhwara, District- Darbhanga.
4. Ajay Kumar Yadav, Son of Kedar Ray Resident of Village Chak Abdulghani, P.O. and P.S.- Mehshi, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. Principal Secretary, Panchayati Raj, Bihar, Government of Bihar.
3. State Election Commission Bihar, Patna, through its Chief Election Commissioner (SEC) Bihar Patna Sone Bhawan, Veerchand Patel Path, Patna.
4. Secretary, State Election Commission Bihar, Patna, Sone Bhawan Veerchand Patel Path, Patna.
5. District Magistrate Cum District Election Officer, (Panchayat), Darbhanga.
6. District Magistrate Cum District Election Officer, (Panchayat) East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Diwakar Prasad Singh, Advocate
For the Respondent/s : Mr.Ajay (GA5)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 20-01-2023

Heard learned counsel for the parties.



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

- (i) That for issuance of appropriate writ, order or direction or writ in the nature of mandamus commanding the respondent to immediately conduct Election for the Post of Mukhiya since it remain more than one year ago when the nomination for the post of Mukhiya was Completed, & their nomination Paper were scrutinized & the Election symbols were allocated but the election was unfortunately Postponed due to death of one of the contestants as such the election was Postponed as such this writ application for issuance of appropriate writ, order or direction or writ in the nature of mandamus commanding the respondent to immediately conduct Election for the Post of Mukhiya under Gram Panchayat Raj Katka under Block Singhwara District Darbhanga & Gram Panchayat Raj Ujhilpur under Block Mehsi District East Champaran & other such similar places where the election was postponed due to death of contestants.
- (ii) That for issuance of appropriate writ, order or direction or writ in the nature of mandamus Commanding the respondents to treat the Judgment dated 01.08.22 passed by this Hon'ble Court presided over by Hon'ble Mr. Justice Ashwani Kumar Singh & Mr. Justice Shailendra Singh as **Judgment in rem** since following the same judgment the Respondent authority ought to have conducted Election at all such places since the Judgment as

aforesaid passed in CWJC No.5970 of 2022 appears to be in nature of **Judgment in rem not in personem**, even otherwise the Respondent ought to have notified the Election to all such



places including Gram Panchayat Raj Katka under Block Singhwara District Darbhanga & Gram Panchayat Raj Ujhilpur under Block Mehshi District East Champaran where the Election was postponed under similar Circumstances but the respondents acting under Pick & Choose basis which is against the democratic process as such direction may kindly be given to respondents to conduct the election at all such places including Gram Panchayat Raj Katka under Block Singhwara District Darbhanga & Gram Panchayat Raj Ujhilpur under Block Mehshi District East Champaran, where the election was postponed due to death of any candidates or otherwise postponed due to any other reasons.

- (iii) That for grant of any other relief or relief's to which the petitioner be found entitled in law be granted to them.

Learned counsel for the State opposes the petition stating that the petition is misconceived; raises disputed question of fact; is not in public interest; and that the issue can be best resolved at the local level by the appropriate authorities.

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. 3, namely State Election Commission Bihar, Patna, through its Chief Election Commissioner (SEC) Bihar Patna Sone Bhawan, Veerchand Patel Path, Patna within a period of four weeks from today by filing a representation for



redressal of the grievance(s);

(b) The said authority shall consider and dispose it of expeditiously by passing 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) The order assigning reasons shall be communicated to the petitioners;

(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;

(j) The proceedings 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, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Sanjay/- PKP

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.01.2023
Transmission Date	NA

