

(2021) 01 PAT CK 0166

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 9971 Of 2020

Pankaj Kumar Chaudhary And
Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: Jan. 21, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Sanjay Karol, CJ; Prabhat Kumar Singh, J

Bench: Division Bench

Advocate: Manish Kumar, Gajendra Kumar Singh, Lalit Kishore

Final Decision: Disposed Of

Judgement

Petitioners have prayed for the following reliefs:-

“For setting aside the order dated 13.04.2020 contained in D.B. No. -324 issued by the Collector, Madhepura, whereby and whereunder the

application filed by the petitioners pursuant to the order of this Hon^{ble} Court dated 22.08.2019 passed in C.W.J.C. 13954 of 2019 has been

dismissed and directed to start the education of the students in Upgraded Girls Middle School, Rauta in place of Government Middle School,

Basudevpur, Pursaini, Madhepura and/or for any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners are found

entitled under the facts and circumstances of the case.”

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 Government level by the appropriate authorities.

In *D. N. JEEVARAJ V. State of Karnataka* (2016) 2 SCC 653, Madan B. Lokur J. has culled out the following process for adjudication of public

interest litigation, more so in a writ of mandamus as is sought to be enforced, at para Nos.34 to 38 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 partes 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 submits that petitioners shall be content if a direction is issued to the concerned respondent(s) to consider and decide the representation (Annexure-6) for redressal of the grievance(s) expeditiously and preferably within a period of two months.

Learned counsel further states that within a period of two weeks from today, petitioners shall place additional material supplementing the averments made in the petition.

Learned counsel for the respondents states that the authority concerned shall consider and dispose of the representation filed by the petitioners expeditiously and preferably within a period of two months from the date of appearance of the petitioners before the authority concerned along with a copy of this order.

Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law.

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.

Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties.

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

We have not expressed any opinion on merits. All issues are left open.

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, also stands disposed of.