Mukesh Kumar Vs State Of Bihar

Civil Writ Jurisdiction Case No. 404 Of 2022

Court: Patna High Court

Date of Decision: March 7, 2022

Acts Referred:
Constitution Of India, 1950 â€" Article 226

Citation: (2022) 03 PAT CK 0014

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Sanjay Prasad, Md. Raisul Haque

Final Decision: Disposed Of

Judgement

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

Ã¢â‚¬Å“ 1. That this is application for issuance of a Writ in the nature of Mandamus or any appropriate WritÃ¢â‚¬â„¢s, OrderÃ¢â‚¬â„¢s, DirectionÃ¢â‚¬â„¢s

commanding the respondents for direction to release the Truck of the petitioner bearing registration No. BR 01 GD9185 in favour of the petitioner

which has been seized in connection with Nardiganj P.S. Case No. 143/21 dated 14.07.21 under Section 379, 411 of the I.P.C.Ã¢â‚¬â€‹

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioner,

learned counsel for the petitioner, under instructions, states that petitioner shall be content if a direction is issued to the authority concerned 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 four months from the date of its filing along with a copy of this order.

Statement accepted and taken on record.

The HonÃ¢â‚¬â„¢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:-

Ã¢â‚¬Å“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)

Ã¢â‚¬Å“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.Ã¢â‚¬â€‹

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)

Ã¢â‚¬Å“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.Ã¢â‚¬â€‹

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)

Ã¢â‚¬Å“24. Ã¢â‚¬Â¦ 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:

Ã¢â‚¬Ëœ198. Demand for performance must precede application.Ã¢â‚¬"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.Ã¢â‚¬â„¢

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.Ã¢â‚¬â€‹

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 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 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) Liberty reserved to the petitioner to approach the appropriate forum/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, 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.