

(2022) 02 PAT CK 0061

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 20331 Of 2021

M/S. Hazarilal Baidyanath Prasad

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 22-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 02 PAT CK 0061

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

Bench : Division Bench

Advocate : Akshay Lal Prasad, Ramadhar Shekhar, Manoj Kumar Singh,
Rabindra Kumar Sharma

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s).

" (a) For setting aside the impugned letter no W/214/ Telplant/Digh./Son/W-5 dated 29.09.2021 (Annexure-9 Series) issued by the Divisional Rail Manager (Engg.), Sonapur (Respondent no.3) along with calculation of License fee (rent) by which the rent (base value Rs. 31,906.43/- has been revised retrospective from 1985-86 by increasing 10% every year of base value of Rs. 31,906.43/- per annum for the 12,000 sq. feet of Railway Land near Railway station at Dighwara already been given to the petitioners for operating petrol pump (Retail and Department) and after the aforesaid retrospectively enhancement since 01.04.1986, the License fee/rent has been fixed Rs. 46,333.86/- per annum i.e. for the period of 01.04.2002 to 31.03.2003 with 1% late fine as penalty as per calculation chart and also directed the petitioner to deposit a difference of total amounting Rs. 1,97,995/- (One Lac Ninety Seven Thousand Nine Hundred Ninety Five) only in favour of F.A. & C.A.O., E.c Railway / Hajipur within 10 days.

(b) For setting aside the impugned letter no. W/214/Telplant/Dighwara/M/

S.Hazarila Baidyanath Prasad/Son/W-5/374 dated 29.10/1.11/2021 (Annexure -10) issued by the Divisional Rail Manager (Engg.), Sonapur (Respondent no.3) by which directed the petitioners to deposit the modified license fee/rent Rs. 1,97,995/- only in favour of F.A. & C.A.D., E.C. Railway/Hajipur within 15 days failing which action will be taken u/s/ P.P.E. Act, 1971 for removing the petrol pump and further directed the petitioners to renew the Agreement before 31.12.2021 after depositing the aforesaid amount.

(c) For directing the respondent authorities to fix the License fee/Rent of the petrol pump of the petitioners from the base value of Rs. 3,600/- per annum since the cut off date of 06.09.2002 vide Hon'ble Court's order at Annexure-3 series of this writ petition.

(d) For directing the respondent authorities to prepare fresh calculation charge from the year 06.09.2002 to 31.03.2003 on the base value of Rs. 3,600/- from the year April, 2002 to March, 2003 and to adjust the advance Rs. 3,600/- as paid in advance on 31.03.2002 and also adjust paid Rs. 2,22,851.86 as advance on 01.04.2010 as per direction of this Hon'ble Court and thereafter refund the amount Rs. 1,35,91,4.32/- as excess amount was paid by the petitioners.

(e) For directing the respondent authorities to not take any action pursuant to the impugned letters which contained in impugned Annexure-9 series and Annexure-10 to the writ petition and further be pleased to stay the same during pendency of this case.

(f) For granting any other other relief/reliefs as the petitioners are entitled for in the eye of law."

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioners, 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 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 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 in the following terms:-

- (a) Petitioners 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 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) Liberty reserved to the petitioners 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.