

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18630 of 2015**

Shahabad Parish Society Son of Late Devasia Mattathilani resident of  
Catholic Church Piro, P.S. Piro, District - Bhojpur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Chairman, Water and Sanitation Committee, Cum Deputy Development Commissioner, Bhojpur District Ara
3. Secretary, District Water and Sanitation Committee, Bhojpur Ara
4. Junior Engineer, PHED, Piro Block, Bhojpur District

... .. Respondent/s

**Appearance :**

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|----------------------|---|------------------------------|
| For the Petitioner/s | : | Mr. K.M.Joseph, Adv.         |
|                      | : | Mr. Cebin Matthew, Adv.      |
| For the Respondent/s | : | Mr. Gp14- M.K. Ambastha      |
|                      | : | Mr. Subodh Kumar, AC to SC26 |

**CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY**  
**ORAL ORDER**

5      25-01-2024                      Heard the learned counsel for the parties.

The present writ petition has been filed for the  
following reliefs:-

*“A writ in the nature of certiorari or any other appropriate writ, order or direction be issued by this Hon’ble Court to set aside the impugned order dated 10.08.2011 (Annexure-7) passed by Chairman, District Water and Sanitation Committee cum Deputy Development Commissioner, Bhojpur District at Ara by which he has rejected the claim of the petitioner for payment in full of the balance amount on the bills submitted for construction of 409 number of hygienic toilets constructed by petitioner under the Total Sanitation Campaign Project of the Government of India, and further directed a deduction of 20% as penalty, with*



*consequential benefits including full payment of outstanding amount with interest at 12% for the period of delay in payment calculated from the date of submission of bill till the date of actual payment.*

*ii. That any other additional relief or reliefs may be granted to the petitioner as this Hon'ble Court may deem fit and proper in the particular facts and circumstances of the case."*

3. Learned counsel for the petitioner has stated that pursuant to the agreement entered between the petitioner and the respondents (Annexure-1), the petitioner was given the contract for construction of toilets for BPL and APL beneficiaries. Learned counsel has stated that as per the terms and conditions of the contract, the agreement entered between the parties and the specifications issued by the authority concerned vide letter no. 112 dated 03.03.2008 (Annexure-2), the petitioner was directed to construct toilets having a brick wall up to three feet. And the petitioner has constructed the required number of toilets. That after completion of the construction, the petitioner has submitted the requisite bills (Annexure-4) duly endorsed by the Joint Executive Officer (JEO) who has verified the construction made and has endorsed the quality of the construction and recommended for payment of the bill amount. That in spite of the completion of the work, the authorities have not paid the bill amounts. Therefore, the petitioner was constrained to approach this Hon'ble Court by way of CWJC



No. 18734 of 2010 (Annexure-6) and this Hon'ble Court was pleased to direct the authority concerned to verify the bills submitted by the petitioner, pass a reasoned order and make the necessary payment. That the authority concerned has passed the order rejecting the claim of the petitioner for the full amount of the bills submitted which is impugned in the present writ petition (Annexure-7). Learned counsel has stated that the authority concerned while passing the order approximately two years after the completion of the construction and submission of the bills has passed the impugned order reducing the amount payable to the petitioner by deducting amounts on legally untenable grounds and also further reducing the bill amount by further 20%. Learned counsel has stated that the outstanding balance amount as per the bills submitted by the petitioner is approximately Rs. 7,63,606/- (Rs. Seven Lakh Sixty Three Thousand Six hundred and Six Only) but the authority concerned has paid an amount of Rs. 4,57,929/- (Rs. Four Lakh Fifty Seven Thousand Nine Hundred Twenty Nine Only). Learned counsel has stated that the impugned order passed by the authority is an arbitrary exercise of power which is not vested in the said authority. That the reduction in the bill amount and the penalty imposed is without any valid reason and has



been passed in a whimsical manner. Learned counsel has stated that the authority without conducting any enquiry or calling for a report with regard to the constructions made by the petitioner has passed the impugned order on the premise that the petitioner has not constructed the toilets as per the specifications given. Learned counsel has stated that the petitioner has constructed the toilets as per the specifications; the same was verified by the JEO and to that effect an endorsement has been made on the bills to pay the amounts. However, the authority who passed the impugned order after lapse of more than two years cannot expect the toilets to remain in the same conditions as they were at the time of completion. Further, learned counsel has stated that once the bills submitted by the petitioner have been verified and endorsed by the JEO, the authority could not have taken a contrary view after lapse of more than two years. Therefore, learned counsel has prayed this Hon'ble Court to allow the present writ petition and consequently direct the authority to pay the full amount of bills.

4. In the counter-affidavit filed by the respondents except making a bold averment that the construction made by the petitioner is not as per the specifications given, the counter-affidavit is silent with regard to the inspection done by the



authority before passing the impugned order. A reading of the impugned order does not reveal that the toilets which have been constructed by the petitioner have been physically verified or inspected or that any report was called from the Subordinate Officers with regard to the construction made. Except stating that a few toilets were inspected by the authority and it was found that the same was not in accordance with the specifications given, the counter-affidavit is silent with regard to the rent of the toilets. It is pertinent to note that the inspection is after a lapse of more than two years from the date of construction.

5. Admittedly, the petitioner has constructed more than 409 toilets but the authority on the premise that a few toilets which were inspected did not meet the specifications has reduced the amount payable to the petitioner. This Court is of the opinion that the said action of the authority in reducing the amount payable to the petitioner and also imposing a penalty of 20% is an arbitrary exercise of power passed without there being any material on record. Even for the sake of argument, the contention of the respondents that the toilets were not as per the specifications that the plastic cover and bamboo were not available on some toilets and were in torn condition is taken as



true, still the authority cannot reduce the amount payable to be petitioner as the inspection was conducted after a lapse of more than two years. The toilets which were constructed prior to June 2009 cannot be expected to be in the same pristine condition, that they were in after lapse of more than two years. Moreover, as seen from the record, the petitioner has submitted the bills immediately after completion of the work and all the bills were endorsed by the JEO, the JEO has endorsed on the bills as under;

"विपत्र में अंकित शौचालयों का निर्माण संस्था द्वारा कराया गया था। इसमें पैराशूट पर्दा लगाया गया था भुगतान किया जा सकता है।"

*"The toilets mentioned in the bill were constructed by the organization. Parachute curtain was installed, the amounts can be paid."*

6. A reading of the endorsement made by the JEO on the bills makes it abundantly clear that the toilets were constructed, that the JEO has inspected the same and found that they were constructed as per the specifications and finally endorsed for making the necessary payment. In the absence of any report that all the toilets constructed by the petitioners were not as per the specifications given, there was no occasion for the authority to reduce the bill amount payable to the petitioner.

7. Having regard to the above mentioned facts and circumstances, the impugned order passed by the respondents



directing for reduction of the amount payable to the petitioner and also reduction of the total bill amount by another 20% towards penalty is set aside. The authorities are directed to make the balance amount payable to the petitioner as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order. In case the authorities do not pay the balance amount payable to the petitioner within the time stipulated by this Court, the petitioner would be entitled to interest at the rate of 7% from the date of submission of bills till the date of realisation.

8. With the above direction, the present writ petition stands allowed to the extent indicated.

**(A. Abhishek Reddy, J)**

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