

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.13539 of 2014**

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1. Mukesh Kumar Pandit, Son of Sri Sone Lal Pandit resident of village - Dharampur Dakhili, P.S. Tajpur, District - Samastipur
2. Kaushilya Devi wife of Sri Ram Briksha Sah resident of village - Dharampur Asli, P.S. Tajpur, District - Samastipur
3. Smt. Lila Devi wife of Sri Maheshwar Rai Resident of village – Saidpur Milki, P.S. Patori, District - Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Director, Bihar Education Project Council, Siksha Bhawan, Rashtra Bhasha Parishad Campus, Saidpur,
3. District Education Officer, Samastipur - cum - District Programme Co - Ordinator, Samastipur
4. District Programme Officer, Primary Education and Sarv Shiksha Abhiyan, Samastipur
5. Executive Engineer, Bihar Education Project, Samastipur
6. Assistant Engineer, Bihar Education Project, Samastipur
7. Junior Engineer, Bihar Education Project, Samastipur
8. Technical Supervisor, Bihar Education Project, Samastipur

... .. Respondent/s

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*Constitution of India---Article 226---writ petition to challenge the decision of Respondent authorities whereby and whereunder each of the petitioners were directed to deposit a sum of Rs. 3,86,563/- in the account of Vidyalaya Shiksha Samiti from their own pocket within a period of fifteen days on the ground that piling depth of the school building constructed by them in the school campus was only 4 feet instead of 11 feet 6 inches---argument on behalf of Petitioners*

*that they are not technical persons and were not entrusted with the technical duties, as such, they cannot be held responsible for any latches in the construction work---further argument that measurement book was duly signed by the Technical Supervisor and certified by the Junior Engineer that the piling depth was 11 feet 6 inches.*

*Findings: As per the terms of the construction agreement, the liability has been fastened upon the petitioners to monitor the progress of the construction work on regular basis as per the specification and drawing---petitioners have failed to discharge their obligation and duties, as cast upon them by the agreement and by virtue of their being the Headmaster, President and Secretary of the Vidyalaya Shiksha Samiti---petitioners and others are liable to be proceeded under criminal law, but soft decision has been taken by the respondents for realization of the cost of construction---no infirmity in impugned order---writ dismissed. (Para 1, 6, 8-10)*

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... .. Respondent/s

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**Appearance :**

For the Petitioner/s	:	Ms.Mahasweta Chatterjee
For the State	:	Mr. Vivek Prasad, GP 18
For B.E.P.C.	:	Mr. Girjesh Kumar

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**JUDGMENT AND ORDER**

**C.A.V.**

**Date : 25-07-2024**

At the relevant point of time, the petition no. 1 was posted as Headmaster of Primary School, Saidpur Milki, Morwa Block, Samastipur and the petitioner nos. 2 and 3 were the President and the Secretary of the Vidyalaya Shiksha Samiti,



respectively. They have filed this writ application challenging the letter no. 739, dated 28.06.2014, whereby the District Education Officer, Samastipur, has directed each of the petitioners to deposit a sum of Rs. 3,86,563/- in the account of Vidyalaya Shiksha Samiti from their own pocket within a period of fifteen days on the ground that piling depth of the school building constructed by them in the school campus was only 4 feet instead of 11 feet 6 inches.

2. The relevant facts involved in the present writ application is that the petitioners submitted an application before the District Education Officer, Samastipur, on 14.07.2012, seeking fund for construction of six extra class rooms in the school campus. In response to the petitioners' proposal, fund was sanctioned for construction and an agreement was executed between the petitioners and the State Project Director, Bihar Education Project Council. One Sunil Kumar Verma, Technical Supervisor (respondent no. 8) was assigned the duty of technical supervision of construction work.

3. On 15.06.2013, the Assistant Engineer, Bihar Education Project Council, Samastipur, issued show cause to the petitioners, stating therein that enquiry was conducted by the Executive Engineer, of the work under construction in the school



campus on 13.06.2013 and 14.06.2013 and it was found that the depth of piling of the building under construction was not as per the specification and instead of 11 feet 6 inches, the piling depth was found to be only 4 feet. The piling of 4 feet was not as per the specification and estimate of the work. The Enquiry Officer observed that building is not safe to be used and could collapse at any time and advised to demolish the building and recover the cost from the responsible persons.

4. On the basis of the enquiry, show cause was served upon all the three petitioners, including Technical Supervisor, vide letter no. 5427, dated 08.08.2013. Reply to show cause were submitted by the petitioners wherein they have accepted that they would rectify the fault in construction at their own cost. Hence, the impugned order, dated 28.06.2014, was issued by the respondent-District Education Officer, Samastipur.

5. Learned Counsel for the petitioners argued that from the terms of the agreement, it is clear that the fund was to be released only after the requisition sent by the Vidyalaya Shiksha Samiti to the first party, i.e. Bihar Education Project Council, on the basis of measurement book certified by the Junior Engineer and Technical Supervisor and it is the Director, who was to release the fund for its disbursement after due verification. The



measurement book was submitted before the District Project Officer and from mere perusal of the measurement book, it would be evident that the measurement of piling is mentioned as 11 feet 6 inches, duly signed by the Technical Supervisor and certified by the Junior Engineer on 15.03.2013. Interestingly, the letter no. 883, dated 15.06.2013, was issued by the same Assistant Engineer, directing the petitioners for filing show cause within three days for defect/fault in the construction appertaining to piling, who himself certified in the measurement book that the piling depth was 11 feet 6 inches.

6. Learned Counsel further submits that the petitioners are not technical persons and were not entrusted with the technical duties, as such, they cannot be held responsible for any latches in the construction work. As per the terms of the agreement, the petitioners were only responsible for releasing the fund on the basis of the recommendation of the Technical Supervisor and Engineers. In other words, the petitioners were working as mere post office. The building has neither been demolished nor has been declared abandoned; rather, classes are going on in the ground floor and Aaganbari Centre No. 133 is also running on the first floor since 2013. Since the building is being used, there is no misuse of the public fund. She further submits that though show



cause notice were also issued to the Assistant Engineer and Junior Engineers, who certified the measurement book, but no action has been taken against them.

7. On the other hand, learned Counsel for the respondents argued that as per clause 7 (च) of the Agreement, the petitioners were required to do the monitoring and supervision of the work. The petitioners were also obliged, as per clause 7 (ख) of the Agreement, to ensure that work was being done as per the specification and drawing and also the estimate prepared for the same. On the complaint made by one Amarnath Roy and others, the Executive Engineer, Bihar Education Project Council, Patna, made an inquiry on 18.06.2013 and submitted his report on 20.06.2013. Considering the defect/irregularities in the construction work, show cause were issued to the petitioners and the petitioner no. 1, in his explanation, has accepted the guilt and said that he was ready to rectify the irregularity/defect from his own pocket. A direction has been issued thereafter for realization of the construction cost from the identified persons, i.e. the petitioners and one Technical Supervisor (respondent no. 8) in equal proportion. Show cause has also been served upon the concerned Assistant Engineer and Junior Engineers, who had certified the measurement book. He further submits that the classes



are not being conducted. The construction has already been declared as unsafe and if any activities are going on in the building in question by the Aanganbari team, the same is being done upon their own risk and cost.

8. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

9. The petitioners and the Director, Bihar State Education Project Council, entered into a written agreement for construction of six extra class rooms in the school campus. As per the terms of the agreement, the liability has been fastened upon the petitioners to monitor the progress of the construction work on regular basis as per the specification and drawing. Upon enquiry, it has been found that the depth of the piling of the column was only 4 feet, instead of 11 feet 6 inches, which was the requirement as per the specification and estimate. The respondent authorities followed the procedure and adhered to the principle of natural justice by asking show cause from the petitioners for the defect/irregularity in the construction work. The petitioners, in their reply, have accepted to rectify the defect/irregularity at their own costs. The newly constructed class rooms have been declared unsafe and insecure and cannot be used for holding classes and it



has been submitted by the respondents that classes are not being conducted in the newly constructed class rooms. The petitioners have failed to discharge their obligation and duties, as cast upon them by the agreement and by virtue of their being the Headmaster, President and Secretary of the Vidyalaya Shiksha Samiti. Apparently, the building fund has been misappropriated in calculated manner in connivance with each other.

**10.** By the impugned letter, the respondent authorities have directed the petitioners to refund the amount spent in the faulty construction in equal proportion inasmuch as once the building has been declared unsafe, the entire construction has to be demolished and the class rooms have to be constructed with proper specification afresh. The petitioners and others are liable to be proceeded under criminal law, but soft decision has been taken by the respondents for realization of the cost of construction.

**11.** Accordingly, I do not find any infirmity in the impugned order, dated 28.06.2014 and liberty is given to the respondents to realize the amount, in question, from the petitioners and others, as per law.

**12.** The facts of the case is very disturbing as the Headmaster and the persons, who are responsible for the proper



education of the students, in connivance, misappropriated the fund for construction of classrooms.

**13.** This Court finds that the measurement book was certified/signed by the Assistant Engineer, namely, Nilotpal Bipin, and Junior Engineers, namely, Chitranjan Kumar and Prem Kumar, but no action has been taken against them. The respondent authorities are directed to take appropriate action against them also, if not already done.

**14.** In the result, this writ application, having no merit, is dismissed.

**15.** There shall be no order as to costs.

**(Anil Kumar Sinha, J.)**

Prabhakar Anand/-

<b>AFR/NAFR</b>	AFR
<b>CAV DATE</b>	05-07-2024
<b>Uploading Date</b>	25-07-2024
<b>Transmission Date</b>	N/A

