

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1320 of 2002

Arising out of

Civil Writ Jurisdiction Case No. 6812 of 2002

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The Bihar State Electricity Board, a body constituted under the Electricity (Supply) Act, 1948, having its office at Bailey Road, Patna.

.... Respondent.... Appellant

Versus

1. M/s Keshav Sheet Grih Pvt. Ltd. (wrongly typed as M/s Keshav Steel Grih (P) Ltd. In CCO, now corrected to be read as M/s Keshav Sheet Grih Pvt. Ltd by an order dated 05.12.2002 passed in C.W.J.C. No. 6812 of 2002), a Company registered under the provisions of Companies Act, 1956, having its registered office at Marwari Mohalla, Begusarai through its Director and authorized signatory Vinod Kumar Hisariya.

.....Writ Petitioner.....Respondent

2. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

3. Finance Controller (Revenue), Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.

4. Electrical Executive Engineer, Electric Supply Circle, Kashipur, Samastipur.

.....Respondents.....Respondents (proforma respondents)

5. Secretary, Energy, Government of Bihar, Patna.

6. Secretary, Industries, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Appellant : Mr. Vinay Kirti Singh, Advocate

For the Respondent No. 1 : Mr. Mrignak Mauli, Advocate

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**CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 22-04-2015

Heard learned counsel for the Bihar State Electricity Board (hereinafter referred to as the 'Board') and learned counsel for the respondent-writ petitioner.

2. By filing this appeal, Board has assailed the order of the learned Single Judge dated 30.10.2002 passed in CWJC No. 6812 of 2002 whereunder writ petition has been allowed holding that cold storage is covered by the State Government's Industrial Policy, 1995 (hereinafter referred to as the 'Industrial Policy') consequential resolution dated 03.09.1996 of the government and Board's circular dated 11.10.1996 issued to execute the Industrial Policy.

3. Having held as above, learned Single Judge directed the Member Finance (Revenue) to enquire as to whether the writ petitioner's cold storage had come into commercial operation from 25.08.2000 and was entitled for grant of benefit under the Industrial Policy for exemption from payment of Annual Minimum Guarantee (AMG) charges.

4. Aforesaid order is being assailed on the ground



that cold storage is not an unit where any manufacturing or processing activity is undertaken, as such, is not entitled for grant of benefit under the Industrial Policy. The order is further challenged on the ground that from the pleadings made in the counter affidavit of the Board itself it is evident that the cold storage in question had come into commercial operation from 25.04.2001 the date on which the unit was energized by the Board and meter installed as on that date the authorities of the Board in presence of the representative of the writ petitioner had found that the meter performance could not be checked due to non-availability of load. With reference to the aforesaid note in Annexure F to the reply on behalf of the Board to the two supplementary affidavits filed by the petitioner in the writ proceeding, learned counsel for the Board submitted that it would appear from Annexure F that the cold storage had come into commercial operation only after 25.04.2001 and prior thereto it had no capacity to draw electricity and thus could not come into operation prior thereto.

5. We have gone through the Industrial Policy as also the resolution of the State Government dated 03.09.1996 and the circular of the Board dated 11.10.1996. From paragraph 15.1 of the Industrial Policy, it is quite evident that not only manufacturing, processing unit is within the thrust industries

entitled to grant of benefit under the Industrial Policy but also units engaged in health services, tourism as also industries connected with post harvest technologies are also included amongst the thrust industries for grant of benefit under the Industrial Policy.

6. In the circumstances, we find no merit in the appeal, which is dismissed.

7. Before parting with this order, we would like to notice that the Board has since been dissolved constituting Bihar State Power Holding Company Limited and four subsidiaries, accordingly, we direct the respondent-writ petitioner to appear before the Managing Director, North Bihar Power Distribution Company Limited, who shall carry out enquiry in light of the direction of the learned Single Judge and inquire whether respondent-writ petitioner's unit had come into commercial operation from 25.08.2000 or from a date subsequent thereto and pass appropriate order in accordance with law.

(V.N. Sinha, J)

(Ahsanuddin Amanullah, J)

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