IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11519 of 2018

M/s Sci India Limited, D.N. Singh Road, Bhagalpur, through its Manager Sri Pramod Kumar Tiwary, son of Late Hridayanand Tiwary, resident of Road No. 15 E, P.S. Rajeev Nagar, Town and District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner Department of Industries, Vikas Bhawan, Bailey Road, Patna.
2. The General Manager, District Industries Centre, Banka.
3. The South Bihar Power Distribution Company Limited, through its Managing Director, Vidyut Bhawan, Bailey Road, Patna.
4. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Chief Engineer (Commercial, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
6. The Electrical Superintending Engineer, Electric Supply Circle, Bhagalpur.
7. The Electrical Executive Engineer, Electric Supply Circle, Banka.
8. The Electrical Executive Engineer (HT Cell), South Bihar Power Distribution Company Limited.
9. The Assistant Electrical Engineer/AO (HT Cell), South Bihar Power Distribution Company Limited.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Alok Kumar Jha
Mr. Atal Bihari Pandey

For the Respondent/s : Mr. Anand Kumar Ojha

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 10-09-2018

The learned counsel for the parties are in agreement that the present case is squarely covered by a judgment dated 27.11.2017 passed in C.W.J.C. No. 12134 of 2015 and other analogous cases, operative portion whereof is reproduced hereineblow:-

> " In view of the above, it is very much clear that the interpretation of the policy should be normal and plain so that real purpose should

be derived. In the present case, the policy has been stipulated in the following manner:-

> *“3(vi)* ***Exemption from Monthly Minimum Charges/Minimum Base Energy charge/ Demand/ Billing Demand***
> *The existing operational units and new units would be granted exemption from Monthly Minimum Charges/Minimum Base Energy Charge/ Demand/Billing Demand or such charge being levied in any other name in the tariff order of BERC with the effective date of the new Industrial Policy.*
> *This facility will be available for five years.”*

On giving a plain reading it is completely clear the facility of exemption from monthly minimum charges has been stipulated for five years and there is no dispute that these industries (petitioners) were granted the benefit of incentive provided under the industrial policy. There is no dispute that the petitioners are not covered by the industrial policy of 2011 of the State of Bihar but, the question has to be seen in what manner the incentive, which has been given in different way, will be interpreted. As has been explained hereinabove, the industry department, law department has given its opinion that once the industry is established during the period mentioned in the industrial policy, 2011, they would be given the benefit of incentive for the period mentioned therein and it cannot be curtailed in any manner in mid of its operation, it will not be dependent on the life of the policy but, the Financial Department has turned turtle, has arrived to a finding that incentive will terminate on the day the life of the policy gets terminated. If the view of the Finance Department is accepted, it will lead to an absurd situation. Example can be given in a manner, if the life of the policy comes to an end on 30.6.2016, the Industrial Establishment establishes its industry or do the diversification of the existing industry on the basis of the industrial policy on 30.6.2014 then, in no circumstances, the benefit can be extended to five years as the life of the policy comes just after two years, now take another example of the policy wherein it has been mentioned that certain industry would be given the tax exemption for ten years, in such a situation, if the concession is interpreted and treated to have only the life of five years then it will be anomalous situation in what manner the benefit of tax exemption can be given, the claim of tax concession in no circumstances can be given. As the maximum life of the policy is for five years, so, in such view of the mater, this Court is of the view that once the industry falls under the policy, the benefit, which has been mentioned, has to be given its full effect to serve the purpose and object of floating the industrial policy in order to attract the foreign investors and the home investors. If it is read otherwise, it will lead to absurdity and will not advance justice rather will create injustice to the industrialist who has established the industries on the invitation and concession given through the industrial policy.

In such view of the matter, the view which has been taken by the Industry Department as well as the Law Department is correct and the view, that has been taken by the Finance Department, is incorrect and, accordingly, the order dated 22.8.2017 passed by the Director, Technical Development Department, Government of Bihar is quashed and this Court issue a mandamus to grant benefit of concession of exemption for Monthly Minimum

Charge/Minimum Base Energy Charge/Demand/Billing Demand in terms of Clause (vi) of the Clause 2 of the Bihar Industrial Incentive Policy, 2011."

2. Having regard to the aforesaid submission of the learned counsel for the parties, the present writ petition is allowed, the final bill dated 21.04.2018 is quashed and the authorities are directed to reconsider the matter and take action in accordance with the judgment of this Court dated 27.11.2017, as referred to hereinabove.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.09.2018
Transmission Date	NA