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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2663 of 2017**

- D. B. Power Limited Having Its Registered Office At Block 1A, Corporate Block, Db City Park, Arera Hills, Opp. MP Nagar, Zone -I, Bhopal - 462016 (Madhya Pradesh) **Corporate Office** 3rd Floor, Naman Corporate Link, Opp. Dena Bank, C -31, G - Block, Bandra Kurla Complex, Bandra E, Mumbai - 400051, Represented By Shri Shailendra Bajpai Aged About 37 Years, S/o Shri D.P. Bajpai, R/o Village Badadarha Tehsil Dabhara District Janjgir Champa Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Commerce And Industries, Mantralaya, Mahanadi Bhawan, Naya Raipur District Raipur Chhattisgarh
2. Director Industries, Directorate Of Industries, Government Of Chhattisgarh, Udyog Bhavan Ring Road No. 1, Telibandha, Raipur Chhattisgarh
3. Chief Electrical Inspector, Government Of Chhattisgarh, B Block, 2nd Floor, Indrawati Bhawan, Naya Raipur, Raipur Chhattisgarh

---- Respondent

For Petitioner	Mr. SB Upadyay, Senior Advocate with Mr. Tejasu Anand and Mr. Anand Shukla, Advocates
For Respondent/State	Mr. Shashank Thakur, Government Advocate

Order On Board By**Hon'ble Mr. Justice Prashant Kumar Mishra****11/9/2018**

1. Heard.
2. The dispute brought before this Court pertains to the

petitioner's liability to pay electricity duty to the State Government, for which, a demand has been raised vide Annexure P/9 dated 9.11.2016 and Annexure P/11 dated 29.3.2017 for the reason that the petitioner is involved in generation as well as auxiliary consumption of electricity, on which, the petitioner is held to be liable to pay electricity duty.

3. Mr. SB Upadyay, learned Senior Advocate appearing along with Mr. Tejasu Anand and Mr. Anand Shukla, Advocates, for the petitioner, would submit that on 7.1.2008, a MOU was executed between the petitioner and the State Government setting out the terms and conditions, on which, the petitioner was to establish a mega project for production of 1200 MW power by erecting a Thermal Power Plant at the cost of Rs.7500 crores. The MOU was subsequently converted into an Implementation Agreement on 6.8.2009.
4. Under clause 4.2.2 of the Implementation Agreement, the Government promised that it will make efforts to facilitate all incentives to the Company that are available to similar or industrial projects in the State as per the applicable Industrial Policy and any other State policy or declaration or announcement of the State Government or the incentives that are offered to similar projects or as may be announced in this regard from time to time.
5. It is put-forth that by virtue of this Clause in the Implementation Agreement, the existing Industrial Policy of the Government granting exemption from payment of electricity duty for a

period of 15 years from the date of initial production would also apply to the petitioner, as such, it will not be liable to pay any electricity duty for a period of 15 years from the date of commencement i.e. w.e.f. 3.11.2014 yet the demand has been raised unilaterally without providing any opportunity of hearing to the petitioner nor the petitioner's request by way of representation -Annexure P/12 received by the concerned Department of the State Government on 12.6.2017, has been responded.

6. Mr. Shashank Thakur, learned Government Advocate for the State, would refer to the Dispute Resolution Mechanism provided under clause 9.2 of the Implementation Agreement, to argue that the writ petition may not be maintainable, however, it is also stated that the State Government has not yet taken any decision on the petitioner's request/representation -Annexure P/12.
7. Having considered the rival submissions, it appears the issue as to whether the petitioner is entitled for exemption from payment of electricity duty on the strength of incentive offered to the petitioner in the MOU/Implementation Agreement read with Industrial Policy needs to be looked into by the respondents after giving an opportunity of hearing to the petitioner, which would obviously include an opportunity of personal hearing.
8. This Court would therefore not take a call on the issue whether the MOU/Implementation Agreement/Industrial Policy would

apply or not leaving the issue to be first decided by the State Government after hearing the petitioner. For the same reason, this Court is also not deciding whether or not the petitioner should have taken recourse to the internal Dispute Resolution Mechanism leaving the said issue open for decision making as and when such occasion arises.

9. For the foregoing, the writ petition is disposed of with direction that on petitioner's submitting fresh detailed representation within a period of 15 days from today before the Secretary of the concerned Department of the State Government along with a copy of this order, the State Government shall consider and decide the petitioner's representation claiming exemption from payment of electricity duty within a further period of 3 months.
10. In the meanwhile, there shall be no coercive action against the petitioner in respect of the subject demand.

Sd/-

(Prashant Kumar Mishra)

Judge

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