

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4304 of 2019

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1. M/s Sumangal Smelters Pvt. Ltd. and Anr 105, Barauni Industrial Area, P.O. Tilrath, P.S. Barauni, Begusarai through its Managing Director Sumanjit Singh Ahliwalia.
 2. Sumanjit Singh Ahluwalia, aged about 38 years, Gender-Male, Managing Director of Sumangal Smelters Pvt. Ltd. 105, Barauni Industrial Area, P.O. Tilrath, P.S. Barauni, Begusarai.

... .. Petitioner/s

Versus

1. M/s Bihar Industrial Area Development Authority 1st Floor, Udyog Bhawan, East Gandhi Maidan , Patna.
2. The Principal Secretary, Department of Industries, Govt. of Bihar Cum Chairman and Appellate Authority, Bihar Industrial area Development Authority.
3. The Managing Director, Bihar Industrial Area Development Authority, 1st Floor Udyog Bhawan, East Gandhi Maidan, Patna.
4. Executive Director, Bihar Industrial Area Development Authority, 1st Floor Udyog Bhawan, East Gandhi Maidan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manik Ved Sen, Adv. Mr.Subhash Chandra Bose, Adv.
For the BIADA	:	Kumar Abhimanyu Pratap Kumar, Adv.
For the Respondent/s	:	Mr.Kinkar Kumar, SC 9. Mr. Sushant Praveen, AC to SC 9.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 16-04-2019 Heard learned counsel for the parties.

Keeping in view the submissions made on behalf of the Bihar Industrial Area Development Authority (hereinafter referred to as the BIADA) that the writ application may be disposed of in terms of the order dated 15.01.2019 passed in CWJC No.1029 of 2019 and CWJC No.1135 of 2019, without looking for a counter affidavit, the matter has been heard on its own merit and is being



disposed of at this stage.

The petitioners in the present case are aggrieved by the order dated 28.11.2018 passed by the then Principal Secretary, Department of Industries, Government of Bihar, who vide the impugned appellate order though interfered with the order of cancellation of allotment of plot issued as per direction of the Managing Director of BIADA but while doing so has imposed certain conditions in the appellate order.

Learned counsel for the petitioners submits that the 'Condition No.iii' in the appellate order is not in accordance with law. It is his submission that the Direction of the appellate authority to the petitioners to submit a Bank Guarantee of Rs.5 Lakhs for a period of two years along with an affidavit to 'BIADA' that the appellant will start the business within three months from the date of the order and shall remain in continuous operations is not a reasonable condition. It is submitted that the petitioners cannot be expected to start its business unless the lease deed of the land is executed in their favour which is also necessary for purchase of machines etc. Learned counsel submits that the 'Condition No.iii' needs to be set-aside.

On the other hand, learned counsel representing the 'BIADA' submits that the petitioners in this case have been allotted the plot in question in the year, 2006 for establishing a unit



of recycling of the lead bearing material. The land was handed over to the petitioners on 03.07.2007 but because the petitioners violated the conditions of the allotment order, the same was cancelled on 07.12.2007. It is pointed out from Memo No.163/D dated 13.01.2016 as contained in Annexure '19' to the writ application that for the reasons stated therein the 'BIADA' had acted in terms of power conferred upon it under Section 6 (2 a) of the Bihar Industrial Area Development Authority Act, 1981 and the Rule framed thereunder. It is submitted that when the petitioners moved in an appeal before the appellate authority and the matter was being heard, it is the petitioners who expressed their willingness to deposit a Bank Guarantee of Rs. 5 Lakhs and assured the appellate authority that they would start the business within three months if the plot is restored. Learned counsel submits that on the face of their own willingness expressed and there being no statement in the writ application that their willingness was obtained otherwise by adopting any coercive method, it would not lie in the mouth of the petitioners to say that the condition imposing submission of a Bank Guarantee of Rs.5 Lakhs is unreasonable.

Learned counsel submits that so far as the submission of the petitioners that three months period should be reckoned from the date of execution and registration of the lease deed of the plot



is concerned, the appellate order may be modified to the extent that the petitioners would start their business within three months from the date of execution and registration of the lease deed of the plot.

It is also pointed out from the two orders passed by this Court as noted hereinabove that in a similar circumstance, when this Court found that those petitioners had agreed on their own to submit a Bank Guarantee of the given amount to show their bonafides, this Court refused to interfere with that part of the order and those petitioners were directed to submit the Bank Guarantee to the extent of the amount agreed by them in course of hearing before the appellate authority. There is no reason why a different view may be taken in this case.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that in the appellate order it is clearly mentioned that it is the petitioners who have shown their willingness to deposit the Bank Guarantee of Rs.5 Lakhs. This being the position when this Court called upon learned counsel for the petitioners to show from the pleadings in the writ application as to whether he has anywhere made a statement that the appellate order does not contain a correct statement or recital, learned counsel submits that no such plea has been taken in the writ application. This Court is, thus, convinced that the petitioners have



themselves offered to deposit a Bank-guarantee of Rs.5 Lakhs to show their bonafide but after the order has been passed by the appellate authority, they are now trying to come out of the condition. This Court sitting under Article 226 of the Constitution of India would not allow the petitioners to play 'hide and seek' from one authority to another authority. That part of the challenge in the writ application is devoid of merit and is dismissed accordingly. This Court is however, willing to clarify that the period of three months to start the business will be reckoned with effect from the date of execution and registration of the lease deed of the plot in question in favour of the petitioners.

BIADA will be obliged to do the needful towards execution and registration of the lease deed immediately and within a reasonable time once the petitioners comply with the conditions stipulated in the appellate order. For a period of 30 days from today, the BIADA will grant time to the petitioners to comply with the direction as regards submission of the Bank Guarantee and other conditions subject to aforesaid clarification.

The writ application is disposed of, accordingly.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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