

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1029 of 2019

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Sarvashree Aditya Enterprises, Growth Centre, Maranga, Purnea through its Proprietor Anil Kumar Sah, Son of late Nandlal Sah, Resident of Sipahi Tola, Boxa Ghat Road, Purne, Police Station and P.O.-Maranga, District-Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, Udhog Bhawan, East Gandhi Maidan, Patna-4.
3. The Secretary, Bihar Industrial Area Development Authority, Udhog Bhawan, East Gandhi Maidan, Patna-4.
4. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Bhagalpur.
5. The Area Incharge, Growth Centre, Maranga, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Singh, Adv.
For the Respondent/s : Mr. Kumar Abhimanyu Pratap, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 15-01-2019 Heard Sri Ranjan Kumar Singh, learned counsel for the petitioner and Sri Kumar Abhimnayu Pratap, learned counsel representing the Bihar Industrial Area Development Authority (in short 'BIADA') and its authorities (respondent nos.2 to 5).

The petitioner, in the present case, is aggrieved by the order dated 10.12.2018 passed by the Chairman, BIADA in Appeal Case No.08 of 2018 by which the Chairman being the appellate authority under the BIADA Regulations, 2007 has restored the allotment of plot in favour of the petitioner on certain terms and conditions.



Learned counsel representing the petitioner submits that so far as the condition no.(i) to clear the pending dues of BIADA with interest and then a direction to submit an affidavit that the petitioner will start business within three months from the date of the order are concerned, the petitioner has no issue and no challenge is being made to those conditions, but the condition towards imposition of penalty of Rs.30,000/- and providing of a bank guarantee of Rs.3 lakhs are onerous conditions and those have been imposed by the appellate authority by exceeding his jurisdiction.

It is submitted that the appellate authority could not have imposed a condition which was not there or which did not flow from the written consequences of violation of the terms and conditions of the allotment order. It is thus submitted that the Writ Court would be fully justified in exercising its jurisdiction to interfere with the order of the appellate authority to the extent it imposes penalty of Rs.30,000/- and further directs the petitioner to submit a bank guarantee of Rs.3 lakhs for a period of two years.

On the other hand, Mr. Kumar Abhimanyu Pratap, learned counsel representing the BIADA and its authorities would submit that no indulgence of this Court is required in the



facts and circumstances of the present case. It is pointed out that the petitioner is sitting on a valuable and prime industrial plot measuring 10,000/- sq. ft. of land since the year 2008. It is submitted that the allotment was earlier cancelled in the year 2011, but this Court at the relevant time while hearing CWJC No.11684 of 2013 took note of the judgment of the Hon'ble Division Bench of this Court in LPA No.353 of 2008 (BIADA & Ors. Vs. Deepak Paints Pvt. Ltd. & Ors.) granted relief to the petitioner to the extent that the cancellation order passed by the Executive Director of the BIADA as contained in Annexure-1/1 shall remain in abeyance till the expiry of six months from the date of the order. In the said case, the petitioner had given an undertaking that six months time which may be granted to the petitioner shall be utilized to make the industrial unit functional and he would produce the relevant document/proof with regard thereto before the Executive Director of BIADA. The learned coordinate Bench of this Court while disposing of the writ application made it clear that if the petitioner is able to do so the order dated 09.08.2011 shall be cancelled or withdrawn by the Executive Director of BIADA.

Learned counsel submits that the petitioner has failed to abide by its undertaking, thus the BIADA took action towards



cancellation of allotment and re-possession of the industrial plot. It is submitted that when the petitioner moved in appeal before the appellate authority challenging the action initiated by the Managing Director of BIADA, the petitioner himself offered to deposit a bank guarantee of Rs.1 lakh to show his bona-fide. It is the petitioner who submitted that he would start the business within three months, if his plot is restored. Thus, learned counsel submits that the direction of the appellate authority to pay penalty of Rs.30,000/- and then direction to deposit a bank guarantee of Rs.3 lakhs are not unfounded and petitioner cannot make any grievance at this stage.

As the arguments progressed, learned counsel representing the petitioner submitted that the petitioner is bound to start business within three months from the date of restoration of the allotment and in order to show his bona-fide the petitioner would submit a bank guarantee of Rs.1 lakh with an affidavit that in case the unit is not brought in commercial production within the stipulated period of three months, not only the bank guarantee so submitted by the petitioner shall be invoked, the BIADA would also be within its authority to re-possess the allotted plot.

Learned counsel representing the BIADA has after



opposing the prayer of the petitioner as aforesaid lastly submits that in order to test the bona-fide of the petitioner, this Court may give him one opportunity to start the production within three months provided he pays the entire outstanding dues with an affidavit and submits a bank guarantee of Rs.1 lakh, but in no case the petitioner will have any opportunity to seek extension of time of three months and in case of default the BIADA would resume possession of the plot.

Having heard learned counsel for the petitioner and learned counsel representing the 'BIADA' and the stand lastly taken by the parties, this Court would dispose off this writ application with following observations and directions:-

(I) The petitioner shall deposit the entire dues of the BIADA with interest as on the date of the passing of the appellate order, within a period of three weeks from today.

(II) The petitioner shall also submit an irrevocable bank guarantee of Rs.1 lakh in favour of 'BIADA' with an affidavit duly sworn by the proprietor of the firm that he would start commercial production in the unit within a period of three months from the date of issuance of the allotment restoration order by 'BIADA'. It is expected that the 'BIADA' would, on compliance of aforesaid conditions by the petitioner, issue



necessary order within a period of one week.

(III) On the petitioner satisfying the aforesaid conditions, BIADA will not insist for deposit of penalty amount of Rs.30,000/- and the said condition imposed by the Chairman, BIADA would be taken to have been set aside. In case the petitioner fails to abide by the aforesaid conditions, the 'BIADA' would be fully entitled and free to proceed against the petitioner and the unit concerned for realization of the outstanding dues and taking over possession of the industrial plot immediately after expiry of three weeks as mentioned above. Similarly, if the petitioner fails to bring the unit in commercial production within the undertaken period of three months, the 'BIADA' would be entitled to take over possession of the industrial polot and in such circumstance the petitioner shall have no grievance.

The order of the appellate authority would be deemed to have been modified to the extent indicated above.

This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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