IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2672 of 2017

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1. M/s S C I India Limited registered office at D.N. Singh Road, P.S.-Kotwali, District-Bhagalpur, through Shiv Kumar Kishorepuria, son of Late Sagar Mal Kishorepuria, one of its Director.
2. Shiv Kumar Kishorepuria, Son of Late Sagar Mal Kishorepuria, Resident of D.N. Singh Road, P.S.- Kotwali, District- Bhagalpur, Director, M/s SCI India Limited.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
3. Director of Industries, Department of Industries, Government of Bihar, Patna.
4. Director of Industries (Technical), Department of Industries, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. P.K. Shahi, Sr. Adv.
Mr. Vikas Kumar, Adv.

For the Respondent/s : Mr. Vikash Kumar, SC-11.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 13-08-2019

Heard Mr. P. K. Shahi, learned senior counsel appearing for the petitioners and Mr. Vikash Kumar, learned SC-11 for the State.

Petitioner No.1 is a company registered under the Companies Act, 1956 having its office at Bhagalpur and who had to move this Court because the benefits as admissible to the petitioner under the Industrial Promotion Policy of State Government, 2011 in so far as it relates to subsidy on non-conventional captive power plant, the diesel generating set as well as on capital expenditure of plant and machinery, eludes him. This writ petition was filed with the following reliefs:

> "I. Respondents particularly respondent nos.2 and 3 may be directed to certify commencement of production in the industrial unit of petitioner no.1 company w.e.f. 22.02.2016.
>
> II. Respondents may be directed to sanction and release industrial subsidy in accordance with Industrial Promotion Policy of State Government, 2011 of the following amount:-
>
> (a) Sum of Rs.6,77,047,68.00 towards 60% value of non-conventional captive power plant.
>
> (b) Sum of Rs. 15,15,831.00 towards 50% cost of diesel generating set.
>
> (c) Rs. 5 crores towards subsidy on capital expenditure of plant and machinery.
>
> III. Respondents may be directed to grant consequential relief for refund of payment made for consumption of electricity based on minimum guarantee agreement."

While the matter is pending that an order was passed by the Director (Technical) communicating the petitioner through letter dated 27.08.2018 in connection with the subsidy on D.G. set which in simple terms informs that since the proposal of the petitioner does not have the approval of the competent authority, hence his application for subsidy on D.G. set is rejected. The petitioner questioned this communication through IA No. 7287 of 2018 and when the matter is taken up Mr. Shahi prays to allow the amendment of the prayer in terms of the statement made in paragraph 8 of the interlocutory application which runs under:

> "8. 1(A) For quashing of part of minutes of meeting dated 28.03.2017 headed by Principal Secretary, Industry Department, contained in Memo no.406 dated 30.03.2017 in so far it relates to petitioner at Serial no.5 by which the proposal of the petitioners was rejected on the ground that there is no approval of the competent authority.
>
> 1(B) For quashing of letter no. 1446 dated 27.08.2018 whereby and where under subsidy of petitioner of D.G. set has been rejected on the ground that the unit of the petitioners is closed."

We have heard learned counsel for the parties and since the prayer made in the interlocutory application is directly relatable to the main relief prayed in the writ petition, we are persuaded to allow the amendment prayed in the interlocutory application which is accordingly allowed.

I.A. No. 7287 of 2018 is allowed.

Re: CWJC No. 2672 of 2017

While it is the submission of Mr. Shahi in reference to a judgment of this Court passed in CWJC No. 12104 of 2018 (**M/s Sunny Stars Hotels Pvt. Ltd. Vs. the State of Bihar & ors.**) which was heard analogous with a number of writ petitions that the issue raised in the present writ petition is squarely covered by the judgment of this Court, the contention is opposed by Mr. Vikash Kumar, learned SC-11 to submit that the case is distinguishable.

Mr. Shahi has informed that of the three prayers initially made, the certification in so far as the commencement of production is concerned, has since been sent and thus he would not be pressing the said prayer. In so far as the prayer relating to release of subsidy mentioned in paragraph II of the relief is concerned, he submits that in view of the decision taken by the Committee chaired by the Principal Secretary, Industries Department bearing Memo No. 406 dated 30.03.2017, even though the Committee has taken note of the fact that the unit had commenced production on 22.02.2016 and that the proposal has the recommendation of the State Investment Promotion Board but in so far as the subsidy on Captive Power Plant/ D.G. Set is concerned, the Committee has incorrectly attributed the nonadmissibility to the absence of recommendation by the General Manager, District Industries Centre, Banka when in fact such recommendation is much present in his letter no. 151 dated 12.03.2016 addressed to the Director (Technical) which is placed at Annexure-2 to the interlocutory application.

According to Mr. Shahi, this Court while examining the stipulations present in the Industrial Policy, 2011 as well as the refuge taken by the respondent authorities to deny the benefit arising therefrom, inter alia, on grounds of lack of approval given by the competent authority on the proposal made, submits that the Committee’s decision as present in Memo No. 406 dated 30.03.2017 which is followed by the letter of the Director (Technical) Development in his letter dated 27.08.2018 whereunder they hide behind this lack of approval by the competent authority to deny them the benefits of subsidy prayed by the petitioner would stand answered by the judgment of this Court and the orders are accordingly become unsustainable.

In so far as the recommendation aspect is concerned, Mr. Shahi has referred to the observations made at paragraph 5 of the Committee minutes at Annexure-1 to the interlocutory application, to submit that the proposal of the petitioner is approved by the State Investment Promotion Board and in so far as the relief prayed is concerned, it also has the recommendation of the General Manager, District Industries Center at Annexure-2 in his letter dated 12.03.2016 and thus there was nothing available in the hands of respondents to deny the petitioner any relief under the Industrial Policy, 2011.

It is however submitted by Mr. Shahi that in case the Committee required any confirmation from the General Manager, District Industries Center for allowing him the relief on the subsidies prayed, it was an internal matter of the Department to be resolved intra departmentally for the petitioner having filed his proposal, unless it was found wanting on any information, the job of the petitioner stopped there.

Mr. Shahi has referred to the statement made by the respondents while replying to the interlocutory application at paragraph 9 to submit that the only ground raised to deny the relief of the petitioner is lacking of the approval by the competent authority and nothing further.

Mr. Vikash Kumar, learned SC-11 while not disputing the legal position settled by this Court in the case of **M/s Sunny Stars Hotels Pvt. Ltd** (supra) invites the attention of this Court to the letter of the Director (Technical) dated 27.08.2018 to submit that in the process of consideration of the case of the petitioner for grant of subsidy an issue has arisen that if the Unit itself is closed, how the subsidy would be extended to the petitioner.

Mr. Shahi has immediately reverted to the stand taken by the State at paragraphs 9 and 12 of the counter affidavit filed on the interlocutory application to submit that the reason assigned by the respondents in the Committee meeting held on 30.03.2017 at Annexure-1 of the interlocutory application or the recommendation of the General Manager, District Industries Center at Annexure-2 nowhere raises issue of such kind.

We have heard learned counsel for the parties and have perused the records and in so far as the issue of approval of the competent authority is concerned, we are persuaded to reproduce the conclusions drawn by this Court while considering the issue in the case of **M/s Sunny Stars Hotels Pvt. Ltd.** (supra) which runs under:

> "(a) The rejection of the case of the petitioners vide letter dated 13.10.2017 impugned at Annexure 19 to CWJC No. 12104 of 2018, the order dated 26.06.2018/31.10.2017 impugned at Annexure 15 series to CWJC no. 15496 of 2018 and 13.10.2017 impugned at Annexure R/1A to the counter affidavit in CWJC No.2981 of 2019 of the Director, Industries simply because the proposal does not have the approval of the

Competent Authority in terms of the resolution dated 16.01.2006, is a whimsical decision, lacking application of mind and bereft of reasons.

(b) In absence of the term 'Competent Authority' defined under the 'Industrial Policy, 2011', the approval granted by the State Investment Promotion Board, accepted by the concerned department in terms of Clause 14 of the 'Industrial Policy, 2011' and acted threupon, there is no requirement of further approval by any other authority.

(c) In absence of any provision present in the 'Industrial Policy, 2011', to require the eligibility proposal of any unit to be placed before the Chief Minister or the Cabinet, the explanation given by the Industries department at paragraphs 10 to 13 of the counter affidavit filed in CWJC No. 12104 of 2018, to justify his illegal act, is de-hors the 'Industrial Policy, 2011'.

(d) In view of the definition of 'Competent Authority' present in the 'Act of 2006 at Annexure P/3 to CWJC no.2981 of 2019 the approval granted by the State Investment Board and acted upon by the concerned department in terms of Clause 14 for extending incentives to 2 of the 3 petitioners under the 'Industrial Policy, 2011', is a valid approval, not open to interference by any other authority on any ground, except eligibility and which is not an issue for the denial of the benefits.

(e) In absence of doubts raised against the petitioners on their eligibility to draw incentives under the 'Industrial Policy, 2011', the orders impugned in the respective writ petitions to deny them the incentives is illegal?

(f) The State having made a promise under the 'Industrial Policy, 2011' to extend the incentive benefits to the budding industrialist, that the petitioners acting on the promise have made investment and fulfilled the criteria for drawing the incentives, the respondent-State cannot deny the incentives on the principles of 'promissory estoppel' as laid down in the judgments relied upon including the one rendered in the case of **M/s Suprabhat Steel Ltd.** (supra).

For the reasons and discussions above and while quashing the order dated 13.10.2017 impugned at Annexure 19 to CWJC no. 12104 of 2018, the order dated 26.06.2018/31.10.2017 impugned at Annexure 15 series and the order dated 13.10.2017 impugned at Annexure R/1A to the counter affidavit in CWJC No.2981 of 2019 in so far as it proceeds to reject the incentives admissible to the petitioners under the 'Industrial Policy, 2011', we hereby direct the State Government in its Industries department and the Commercial Taxes department to ensure that every incentive to which the 3 petitioners are found entitled under the 'Industrial Policy, 2011' shall be accorded to them within a maximum period of 3 months from today without either raising technicalities of approval or on the issue of change in payment procedure as raised by the Commercial Taxes department for in my opinion, the two arms of the State Government have to act within the stipulation present in 'Industrial Policy, 2011' for according benefits to these petitioners and not allow to these petitioners to either run around the corridors of the respective department or to approach this Court again specially where their admissibility to the incentives is not in question.

The writ petition is allowed with the directions above."

In view of the position so settled, the decision of the Committee chaired by the Principal Secretary as circulated vide Memo No. 406 dated 30.03.2017 together with the letter of the Director (Technical) dated 27.08.2018 in so far as it refuses grant of subsidy to the petitioner on grounds of lack of approval by the competent authority is unsustainable and accordingly set aside.

The second part of the objection is regarding the absence of recommendation by the General Manager, District Industries Center which objection again we find unsustainable in view of the recommendation of State Investment Promotion Board as well as the recommendation of the General Manager, District Industries Center made to the Director (Technical) through letter dated 12.03.2016 at Annexure-2.

In so far as the objection raised by Mr. Vikash Kumar, learned SC-11 on the functional unit is concerned for which he refers to paragraph 10 of the counter affidavit to the interlocutory application, since this is not one of the objections for denial of the subsidy, we refrain from expressing any opinion thereon at this stage.

For the reasons and discussion above and while quashing the orders impugned in the interlocutory application to the extent it refuses grant of subsidy to the petitioner on grounds of lack of approval by the competent authority and remit the matter to the Principal Secretary, Industries for release of the subsidies as found admissible to the petitioner in terms of the prayer made by him in paragraph 1 of the writ petition as also reproduced hereinabove within a period of three months of the receipt/production of a copy of this judgment.

The writ petition is allowed with the directions and observations above.

(Jyoti Saran, J)

(Partha Sarthy, J)

Anjula/Surendra

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20-08-2019
Transmission Date	NA