IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.51 of 2016

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1. The Bihar State Power holding Company Ltd. through its Chairman cum Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Chief Engineer Comm.), South Bihar Power Distribution Company Limited Vidyut Bhawan, Patna.
3. The Electrical Superintending Engineer, P.E.S.U. (West) South Bihar Power Distribution Company Limite
4. The Assistant Electrical Engineer (H.T. billing) P.E.S.U. (West), South Bihar Power Distribution Company Limited, Vidhyut Bhawan, Patna.

... ... Petitioner/s

Versus

1. M/s Hotel Satkar Pvt. Limited, Patna through it Managing Direcvtor, Batuk Prasad Narayan Singh, Son of Late Vidya Prasad Narayan Singh, Resident of Batuk Niws, Frazer Road, Oppsoite Dakbunglow, P.S. Kotwali, P.O. - G.P.O., District - Patna.
2. The Consumer Grievances Redressal Forum South Bihar Power Distribution Company Ltd., Vidyut Bhawan-II, Patna.
3 The State of Bihar through its Secretary, Deptt. Of Industries, Govt. of Bihar, Patna.
4 The Department of Tourism, through its Secretary, Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Vinay Kirti Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
Date : 17-09-2019

The present writ petition has been filed for quashing the order dated 17.03.2015 passed by the Consumer Grievances Redressal Forum (hereinafter referred to as "CGRF") i.e. the respondent no.2 in Case No. 26 of 2013 under Section 42 of the Electricity Act, 2003.

2. The brief facts of the case, according to the petitioners, are that the respondent no.1, namely, M/S Hotel

Satkar Pvt. Limited, is a H.T. Consumer of the South Bihar Power Distribution Company Ltd. having sanctioned load of 75 KVA under H.T.S.I. Tariff. The respondent No.1 had filed an application for grant of exemption from payment of minimum guarantee charges, as envisaged in the Industrial Policy, 2006 and further reiterated in the Industrial Policy 2011 and consequently, it had prayed to refund the amount realized in excess of the actual payment contrary to the Industrial Policy. The respondent no.1 Hotel is stated to have been approved by the Ministry of Tourism, Government of India vide letter dated 25.01.1972 and also claims to be recognized by the Government of Bihar as a service Industry. The respondent no.1 is stated to have approached this Court by filing a writ petition in the year 2012, however, this Court vide order dated 07.01.2014 had directed the respondent no.1 to avail the alternative remedy of approaching the CGRF under Section 42(5) of the Electricity Act.

3. It is the case of the petitioners that in light of the Memo no. 46 dated 15.01.2008 issued by the Finance Controller (Revenue), erstwhile Bihar State Electricity Board, Patna, Hotel units are not entitled for incentive covered under Industrial Policy, 2006, hence the respondent no.1 had not been allowed exemption either under the Industrial Policy, 2006 or under the Industrial Policy, 2011, hence, there is no question of refund of excess payment.

4. It is the further case of the petitioners that after the respondent no.1 had approached the CGRF and its complaint was pending adjudication, the Managing Director of South Bihar Power Distribution Company Limited (hereinafter referred to as "SBPDCL") vide its letter dated 26.12.2014 had requested the Principal Secretary, Department of Tourism that since a dispute had arisen regarding grant of incentive to the Hotels registered with the Directorate of Tourism, under Industrial Policy, a list of hotels, which are entitled for incentive under Industrial Incentive Policy, 2006, may be sent so that the needful may be done.

5. It appears that thereafter, the learned CGRF, Patna vide order dated 17.03.2015 passed in Case No. 26 of 2013 had allowed the case of the respondent no.1 and had held that the respondent no.1 herein is entitled to avail subsidy/ incentive under the head of both units charge as well as demand charge for shortfall of AMG/ MMG/MMC in case consumption is less than its contract demand of 75 KVA, hence, the learned CGRF directed the C.E. (Commercial)/ S.E. (H.T. Cell)/ E.E.E. (H.T.

Cell) to revise the bill after allowing the said incentive with effect from 01.04.2006 till date.

6. After passing of the aforesaid order dated 17.03.2015, the Secretary, Tourism Department, Bihar, Patna wrote a letter dated 17.04.2015 to the Chairman-cum- Managing Director,, Bihar State Power (Holding) Company Ltd., Patna stating therein that the respondent No.1 hotel has got no recognition from the Tourism Directorate, hence, it is not liable to be granted any benefits/ exemption. In the said letter dated 17.04.2015, it was also stated that if it is the case of the respondent no.1 Hotel that it has been recognized by the Tourism Department, Government of India, then in that case, the said Hotel can avail those benefits which are to be granted by the Tourism Department, Government of India, however, on the basis of the approval granted by the Tourism Department, Government of India, the said hotel cannot obtain the benefit of the facility made available by the Bihar Government. Finally, in the said letter dated 17.04.2015 it was stated that the Tourism Directorate, Government of Bihar, vide letter dated 27.01.2015 had made available a list of registered hotel, according to which the respondent no.1 hotel was not a registered hotel which was engaged in encouraging the Tourism Industry, hence, it was not fit to be granted relief/ Industrial Incentive policy.

7. It is submitted by the learned Senior counsel for the petitioner that the list of hotels registered by the Tourism Directorate, Government of Bihar, made available to the petitioners by the Directorate Tourism, Bihar, Patna vide letter dated 27.01.2015 (Annexure-5 to the writ petition) does not contain the name of petitioner no.1 hotel, hence, the respondent no.1 was/is not entitled to grant of any exemption under the Industrial Incentive Policy.

8. The learned Senior counsel appearing for the petitioners herein has assailed the order passed by the learned CGRF dated 17.03.2015 on the ground that firstly though the learned CGRF had granted time to the petitioners herein to clarify their stands in light of the letter of the petitioner dated 15.01.2013, according to which all the applications for grant of exemption from payment of AMG/ MMG charges of the Hotels were required to be sent to the headquarters so that the information of the Tourism Department could be obtained and in response whereof, the petitioners company had also sought clarification from the Tourism Department, Government of Bihar, however, without waiting for the submission of the clarification by the petitioners company, the learned CGRF had hurriedly closed the hearing and passed the impugned order dated 17.03.2015 against the petitioners. It is submitted that the impugned order dated 17.03.2015 passed by the learned CGRF would itself demonstrate that neither any reason has been furnished nor any provision of the Incentive Policy has been relied upon so as to allow the case of the respondent no.1 Hotel for being liable to be granted exemption from payment of AMG/ MMG/MMC charges. Secondly, the learned Senior counsel for the petitioners has submitted that for the first time the State of Bihar, in its Industrial Incentive Policy, 2006 under Clause-2 (xii) decided to grant AMG/ MMG/MMC exemption from the date of declaration of the new Industrial Policy, both to the existing units as well as to the new units for five years. The learned Senior counsel has submitted that under Clause-12 of the Industrial Incentive Policy, 2006, a committee was to be constituted under the Chairmanship of the Secretary, Department of Industries, having various members as mentioned under the said Clause-12 and the said Committee had to decide the incentive to be granted to the units. However, the learned CGRF, without impleading the Department of Industries as party respondents, has illegally directed the petitioners herein to grant exemption, as aforesaid, to the respondent no.1 Hotel.

9. The learned counsel appearing for the Department of Industries, Bihar, Patna, referring to the supplementary counter affidavit filed on behalf of the respondent no.3, has submitted that under the Industrial Policy, 2006/2011, incentives are given to only such units only whose projects/ investment proposals are approved by the competent authority, as defined under notification no. 128 dated 16.01.2006. In the cases of the projects up to one crore of investment, the proposals are placed before the District Level S.I.P.B. and proposals above Rs. One crore are placed before the SIPB headed by the Development Commissioner. It is only after approval of the competent authority that, the exemption/ benefits are given to the consumers. It has been further submitted that as far as the respondent no.1 Hotel is concerned, no application has ever been made before the SIPB, hence, the proposal of the respondent no.1 Hotel has not been approved by the competent authority. It is pointed out that in the Industrial Incentive Police, Bihar, 2006 'Tourism' was brought within the purview of Industries by virtue of Annexure-1 to the Industrial Incentive Policy, 2006 under Clause 2(c) (vii). Later on, by memorandum dated 14.05.2009, 'Tourism' was defined to include Hotels of all categories which were encouraging tourism activity and one encouraging tourism. The learned counsel also pointed out that the Department of Tourism, Government of Bihar had formulated a Bihar Tourism Policy, 2009 for accelerated tourism growth of the State which was published vide memo No. 1482 dated 24.07.2009 in tune with the 2006 policy. It is the case of the respondent no.3 that any beneficiary/ consumer under the Industrial Incentive Policy, 2006 has to approach the competent authority by making appropriate application for grant of subsidy/ exemption and only after the competent authority, i.e. S.I.P.B. in the case of Hotels, recommends the proposal for grant of exemption and it is approved by the competent authority, all exemptions can be granted. It has been categorically stated on oath in the supplementary counter affidavit filed by the respondent no.3, in paragraph No.-26, that no application seeking any incentive was filed before the Industries Department by the respondent no.1 Hotel, hence, the case of the respondent no.1 has never been placed before the competent authority. In paragraph No.-28 of the supplementary counter affidavit filed by the respondent no.3, it has been stated that the District Industries Centre, Patna has held an enquiry and had found that the respondent no.1 Hotel has neither been issued any certificate of registration nor any certificate granting exemption/ reimbursement of AMG/ MMG charge has ever been issued. The letter of the Secretary, Tourism Department, Government of Bihar, Patna dated 17.04.2015 would show that the respondent no.1 Hotel is neither approved nor registered by the Tourism Department, Govt. of Bihar, hence, is not entitled for any incentive.

10. The learned counsel appearing for the Tourism Department, by referring to the counter affidavit filed on behalf of the respondent no.4 has submitted that in order to promote tourism as industry, in Tourism Policy, 2009 special incentives were offered to the private entrepreneurs which also includes Hotels, however, the Tourism Directorate, Government of Bihar, vide resolution dated 17.01.2998 has laid down certain criteria to the effect that hotel/ motel owners and tour operators have to furnish information regarding their annual profit and loss, information regarding number of rooms and beds available, information regarding annual statistics and other information, as required under the said notification. It is also submitted that the Tourism Department has further issued a resolution dated 27.07.2012 whereby and whereunder the registration criteria of hotels/ motels were further improved and two categories were made.

11. The learned counsel for the respondent no.4 has submitted that the Directorate of Tourism, Government of Bihar, vide letter dated 27.01.2015 had informed the Managing Director, SBPDCL, Patna about the list of hotels registered with the Directorate, however, the respondent no.1 hotel does not find mention in the said list. It has also been submitted that since the respondent no.1 hotel has not been registered with the Tourism Directorate, Government of Bihar, it is not entitled to any benefit under the Industrial Incentive Policy, 2006/2011.

12. Per contra, the learned counsel for the respondent no.1 hotel has submitted that the State Government came out with the Industrial Incentive Policy, 2006 which came into effect from 01.06.2006, whereby and whereunder apart from the new industrial units, the existing units were also provided certain benefits and Clause 2(xii) provided for exemption from AMG/MMG. It is further submitted that the term 'industry' has been defined in the Industrial Policy, 2006 which also includes "Tourism" as is apparent from Annexure-1 to the Industrial Incentive Policy, 2006. The learned counsel for the respondent no.1 has contended that it is amply clear that the hotels are covered under the Tourism Industry and are entitled for the benefits under the Industrial Incentive Policy, 2006/2011. The learned counsel for the respondent no.1 has also relied on the memo no. 1482 dated 24.07.2009 issued by the Department of Tourism, Bihar, Patna to submit that the hotels are also entitled to exemption from AMG/ MMG under the Industrial Incentive Policy, 2006/2011. It is next contended that the respondent no.1 hotel is duly approved by the Government of India, Ministry of Tourism vide letter dated 25.01.1972 and has its recognition since then as also is an existing unit. It is submitted that the Industrial Policy nowhere postulates that the respondent no.1 hotel should be registered by the Department of Tourism, Govt. of Bihar, in order to become entitled for receipt of incentive under the Industrial Incentive Policy.

13. Lastly, it has been submitted by the learned counsel for the respondent no.1 hotel that neither there is any requirement of the respondent no.1 hotel being registered by the department of Tourism, Govt. of Bihar, nor there is any requirement of it being registered by the Department of Industry for the purposes of grant of incentive under the Industrial Incentive Policy, Bihar, 2006/ 2011. It is also contended that the respondent no1 hotel is a very old hotel and is abiding by the different statutory provisions, hence, it entitled to the incentive under the Industrial Incentive Policy, Bihar, 2006/2011 pertaining to exemption from payment of AMG/MMG. The learned counsel for the respondent no.1 has relied upon a judgment reported in 1995(2) PLJR 536 in the case of **Suprabhat Steel Vs. The State of Bihar & Ors**., to contend that if a policy intends to give benefit/ facility to a class of industry, then imposition of any further condition, so as to create any class of industry out of the industries to whom the benefit or facility was intended, is arbitrary or unreasonable and imposition of such condition tantamount to amendment of the policy itself. The said opinion expressed by the learned Division Bench of this Court has been upheld by the Hon'ble Apex Court in a judgment reported in (1999) 1 SCC 31 (**State of Bihar and others vs. Suprabhat Steel Ltd. and others**). Lastly, it is submitted that an incentive provided by the State, under Industrial Policy has to be given a liberal interpretation and restricting such benefit on technical grounds could be detrimental to the industrial policy itself and its very intent to promote the industry. Thus, it is the submission of the learned counsel for the respondent no.1 that the impugned order dated 17.03.2015 passed by the learned CGRF does not suffer from any infirmity.

14. I have heard the learned counsel for the parties and perused the materials on record. At the outset it may be relevant to refer to the various provisions of the Industrial Incentive Policy, Bihar, 2006 herein below:-

> **" 2(xii) Exemption from AMG / MMG:**
>
> Working units at present and new units will avail exemption from AMG / MMG from the date of declaration of the New Industrial Policy. This facility will be granted for five years.
>
> 12. For incentives contained in this Policy a committee would be constituted under the Chairmanship of Secretary Industries with the Director of Industries, Director Technical Development, a representative each of the Commercial Taxes Department, and Bihar State Electricity Board (wherever necessary) as well as the concerned M.D of the Industrial Area Development Authority as its Members. This Committee would decide on post-production incentives to be given to new units."

15. The relevant portions of Annexure-1 to the Industrial Incentive Policy, Bihar, 2006 are reproduced herein below:-

> "1. Effective date: "Effective date" means the date on which the provisions of this Policy come into force i.e. 01.04.2006. This Policy will remain in force for 5 years from the date of issue of orders.
>
> 2. Industrial Unit/ Industrial concern: 'Industrial unit / concern' means any unit / concern engaged or to be engaged in manufacturing / processing / servicing industry under the following categories:
>
> c) Other categories:

(7) Tourism.

3. Existing Industrial Unit:

"Existing Industrial Unit" means an industrial unit which is in commercial production.

4. **New Industrial Unit:**

"New Industrial Unit" means an industrial unit in which commercial production has commenced within five years from 01.04.2006.

8. Expansion/Modernisation/Diversification:

"Expansion/ Modernisation/ Diversification of an existing unit' would mean additional fixed capital investment in plant and machinery to the extent of 50% or more of the undepreciated value of fixed capital investment in the existing unit leading to incremental production capacity which would not be less than 50% of the initial installed capacity. In order to qualify a unit undertaking expansion/ modernisation/ diversification should send prior intimation to the General Manager, District Industries Centers or the Managing Director, Bihar Industrial Area Development Authorities & Deputy Commissioner Commercial Taxes, as the case may be in respect of Small Scale Industry or the Director of Industries/Director, Technical Development and Commissioner, Commercial Taxes in case of medium and large industries before undertaking such expansion/ modernisation/ diversification Programme. Such intimation should be accompanied by detailed expansion/ modernisation/ diversification proposal giving the specific period of proposed additional investment.

12. Date of Production:

The "date of production" of an industrial unit shall mean the date on which the unit actually commences commercial production of the item for which the unit has been registered. As regards the date of production of a SSI unit, the certificate issued by the respective General Manager, District Industries Centre of Managing Director, Industrial Area Development Authority would be valid. In case of any dispute regarding the date of production, the decision of the Director on Industries shall be final. In case of large and medium industries the certificate issued by the Director Technical Development would be valid. In case of any dispute regarding the date of production, the decision of the Industrial Development Commissioner/ Secretary Industries shall be final. Those industrial units which commence in production on 01.04.2006 or thereafter, but whose capital investment is prior to 01.04.2006 would be eligible under Industrial Incentive Policy, 2003 (in case they qualify) or under the New Policy as alternative. The units will not be entitled to part benefits of both the policies. Three months from the date of publication of the notification in the Bihar Gazette of this Policy, the units will have to give in writing to Director Industries or Director, Technical Development indicating the preferred alternative."

16. It is apparent from the aforesaid provisions of the Industrial Incentive Policy, Bihar, 2006 that as far as exemption from AMG/ MMG is concerned, working units at present and new units are eligible to avail exemption from AMG/MMG for a period of five years from the date of declaration of new industrial policy and tourism has also been included under the definition of industrial units/ industrial concern. The said Industrial Incentive Policy, 2006 also provides for constitution of a committee under the Chairmanship of Secretary Industry, having various members, as provided under Clause 12 of the said policy which has been authorized to decide all incentives to be given to the new units. In fact, the department of Industries, Bihar, Patna vide resolution dated 14.05.2009 has further defined the Tourism Industry wherein all classes of hotels engaging in encouraging the tourism in the State of Bihar have been included. I further find that the Bihar Tourism Policy, 2009 has also been enacted vide resolution dated 24.07.2009, which also provides for the working units at present and new units (including hotels) to avail exemption from AMG/MMG from the date of declaration of the new Industrial Policy and the Bihar State Tourism Development Corporation, monitored by its parent Tourism Department, Government of Bihar, has been made as the nodal executing agency of the State Government. I further find that the Tourism Department, Government of Bihar, Patna vide resolution dated 17.01.1998 had come out with the modalities for grant of recognition to hotels/ motel owners and tour operators. In fact, after the enactment of the 2009 Tourism Policy, the Tourism Directorate, Government of Bihar, Patna vide letter dated 27.07.2012 had come out with the policy of granting approval/ registration of hotel/ motel/ rest house and had further fixed the fee for the same. This Court has also perused the letter dated 27.01.2015 sent by the Director Tourism Department, Bihar, Patna to the Managing Director, SBPDCL, Patna enclosing a list of hotels, from which it is apparent that the respondent no.1 hotel is not a registered hotel. This Court has also perused the letter dated 17.04.2015 written by the Secretary, Tourism Department, Government of Bihar, Patna to the Chairman-cum- Managing Director, Bihar State Power Holding Corporation Ltd., Patna wherein it has been categorically stated that the petitioner is not a recognized/ registered hotel, hence is not entitled to relief/ exemption under the Industrial Incentive Policy, Bihar, 2006. This Court has also gone through the letter dated 15.01.2013 written by the Secretary, Bihar State Power Holding Company Ltd., addressed to all the C.E. (Commercial)/ C.S.E. (H.T. Cell)/ E.E.E. (H.T. Cell) which postulates that in case of hotel, for the purposes of grant of AMG/ MMG, information should be sought from the Tourism Department before granting exemption of AMG/ MMG.

17. From a bare reading of the Industrial Incentive Policy, Bihar, 2006, all the relevant documents, Annexure-1 to the said policy and from perusal of the notifications issued by the Industries Department, Government of Bihar, Patna, as referred to above in the preceding paragraphs, it is apparent that for the purposes of being entitled to grant of exemption from AMG/ MMG under the Industrial Incentive Policy, Bihar, 2006, as far as the hotels are concerned, they should be engaging in promotion of tourism as also for attracting tourism. It is equally apparent that the hotels in the State of Bihar are required to obtain approval/ registration from the Tourism Department, Government of Bihar, Patna under the aforesaid resolution dated 17.01.1998 and 27.07.2012. It is equally apparent that under Clause-12 of the Industrial Incentive Policy, Bihar, 2006, the Committee constituted under the Chairmanship of the Secretary, Industries has to decide upon the proposal regarding post-production incentives to be granted under the Industrial Incentive Policy, 2006. Even considering the Bihar Tourism Policy, 2009 for the purposes of grant of incentive, the Bihar State Tourism Development Corporation, monitored by the Tourism Department, Government of Bihar, Patna, is the nodal agency of the State Government. The petitioners have also taken opinion of the Tourism Department, Government of Bihar, Patna wherein the Secretary, Tourism Department vide letter dated 17.04.2015 has informed the petitioners that the hotels which have been granted recognition have to submit details regarding arrival of local and foreign tourist in the hotel in every month by filing details in the first week of every month and this is the basis on which decision is taken as to whether the hotel is connected with tourism industries or not and as to whether it is fit to be granted benefits/ exemption. However, as far as the respondent no.1 hotel is concerned, it is neither recognized nor registered by the Tourism Directorate, Government of Bihar, Patna, hence, it is not entitled to any benefits under the Industrial Incentive Policy, 2006.

18. It appears that while the respondent no.1 hotel had approached this Court claiming exemption under the Industrial Incentive Policy, 2006, this Court by an order dated 07.01.2013 passed in CWJC No. 4819 of 2012 had referred the matter to the learned CGRF in terms of Section 42 of the Electricity Act, 2003, whereupon the respondent no.1 had filed a complaint before the learned CGRF and the learned CGRF, Patna by the impugned order dated 17.03.2015 has held that the respondent no.1 hotel is entitled for exemption from payment of AMG/ MMG/ MMC charges under the Industrial Incentive Policy, Bihar, 2006.

19. This Court is of the opinion that the impugned order dated 17.03.2015 passed by the learned CGRF, Patna is unfounded, fallacious, arbitrary, irrational and capricious, since the same is neither based on any reasoning nor is supported by any cogent ground whatsoever, permissible under the relevant Industrial Incentive Policy, Bihar, 2006 and other related documents as also does not show any application of mind apart from being bereft of any rationality. Moreover, considering the dispute in question, it was incumbent for the learned CGRF to have added the respondents no. 3 and 4 herein as party respondents to the complaint filed by the respondent no.1 hotel and should have thereafter issued notice to them and sought their reply before proceeding further to pass the impugned order dated 17.03.2015.

20. Having considered the entire matter in its true perspective as also having regard to the facts and circumstances of the present case and for the reasons mentioned herein above, this Court is of the opinion that the impugned order dated 17.03.2015 passed by the learned CGRF, Patna is unsustainable in the eye of law, hence is quashed. This Court further holds that in view of the facts mentioned herein above, as also considering the various resolutions/ notifications/ communications referred to herein above as also the Industrial policy in question, the respondent no. 1 hotel has not been able to make out any case for being entitled to avail subsidy/ incentive pertaining to exemption from payment of AMG/ MMG Charges under the Industrial Incentive Policy, Bihar, 2006/2011.

21. The writ petition stands allowed to the aforesaid extent.

Tiwary/- **(Mohit Kumar Shah, J)**

AFR/NAFR	AFR
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