

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.490 of 2019

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M/s. Om Sai Cement Industries through Arun Kumar S/o – Sh. Banarsi Singh,
Akhtiyarpur, P.S. - Rajaura, District – Begusarai.

... .. Petitioner

Versus

1. The Principal Secretary, Department of Industries, Govt. of Bihar, Patna.
2. Bihar Industrial Area Development Authority, Patna, through its Secretary, 1st Floor, Udyog Bhawan, Gandhi Mandain, Patna.
3. The Managing Director, Bihar Industrial Development Authority, Patna, 1st Floor, Udyog Bhawan, Gandhi Mandain, Patna.
4. The Executive Director, Bihar Industrial Development Authority, Patna, 1st Floor, Udyog Bhawan, Gandhi Mandain, Patna.
5. The Development Officer, Bihar Industrial Development Authority, Patna, 1st Floor, Udyog Bhawan, Gandhi Mandain, Patna.
6. The Area In-charge, Branch Office, Industrial Area, Barauni.
7. The Deputy Secretary, Industries Department, Govt. of Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Ms.Namrata Mishra, Advocate Mr. Alok Ranjan, Advocate Ms. Archana Jha, Advocate Ms. Anamika, Advocate
For the BIADA	:	Mr. Kumar Priya Ranjan, Advocate Mr. Niraj Kumar, Advocate
For the Respondent/s	:	Mr.Rajiv Roy- GP1

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 15-02-2019 At the outset, Mr. Priya Ranjan, learned counsel representing the Bihar Industrial Area Development Authority (in short the ‘BIADA’) submits that on 15.01.2019 itself he has taken a stand on behalf of the ‘BIADA’ that the writ application may be disposed of without any counter affidavit. He still remains on the same stand and as such the court is not insisting him for filing a counter affidavit.



2. Learned counsel for the parties agreed that the writ application may be disposed of at this stage itself on the basis of the materials available on the record.

3. Heard learned counsel for the petitioner as well as learned counsel representing the 'BIADA'.

4. Learned counsel for the petitioner has assailed the order as contained in Memo No. 3614/d dated 20.06.2018 under signature of the Executive Director, 'BIADA' by order of Managing Director whereby the allotment of land in question in favour of the petitioner has been cancelled on the ground that one F.I.R. has been lodged under provision of Bihar Excise and Prohibition Act, 2016 which gives rise to Barauni P.S. Case No. 416/2017 against the Unit in question.

5. Learned counsel submits that when the petitioner was called upon to show cause as to why the allotment should not be cancelled, the petitioner submitted a detailed reply as contained in Annexure-6 to the writ application. Learned counsel submits that on a bare perusal of the impugned order as contained in Annexure-7, it would appear that the reply of the petitioner has not at all been



looked into muchless considered.

6. It is further submitted that the petitioner had also appealed against the impugned order but the Appellate Authority vide his order dated 27.11.2018 refused to interfere with the order of cancellation of allotment.

7. It is further pointed out from the order passed in the confiscation proceeding as contained in Annexure-3 to the writ application that the land in question was not subjected to any confiscation proceeding.

8. It is submitted that in the aforementioned facts and circumstances of the case even though it was the stand of the 'BIADA' on 15.01.2019 that the writ application may be disposed of without any counter affidavit, when the matter was again taken up on 25.01.2019, this court directed the 'BIADA' to file a counter affidavit within two weeks answering the issues raised in the writ application. The relevant part of the order dated 25.01.2019 which has been pointed out by learned counsel for the petitioner reads as under:

"The Bihar Industrial Area Development Authority (hereinafter referred to as the 'BIADA') will file a counter affidavit within two weeks from



today answering amongst the other issues a particular question raised by the petitioner as to how he may be deprived of his lawful allotment of the plot in question until the guilt against him is proved in accordance with law in the criminal case lodged under the provisions of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act of 2016').

It is submitted that under the provisions of the Act of 2016, it is a valid defence on behalf of the owner of a land or a premise that offence under the Act of 2016 was committed in the premises or by using premises without his knowledge. Learned counsel has submitted that the only reason for which the petitioner is being deprived of the allotment of plot is the lodgment of the criminal case under the Act of 2016."

9. It is submitted that since the specific issue raised before this court has not been contested by filing any counter affidavit and it is apparent from the impugned order that the reply of the petitioner has not at all been considered, the appellate order as well as order issued by the Executive Director both are liable to be set aside on the ground of non-consideration of the materials available on the record.

10. Mr. Kumar Priya Ranjan, learned counsel representing the 'BIADA' submits that the seizure of illicit



liquor from the premises is itself a good ground to cancel the allotment of industrial plot. Learned counsel is however unable to demonstrate from the impugned order that the reply submitted on behalf of the petitioner in response to the show cause notice has been considered by the competent authority.

11. Learned counsel accepts the legal position under Section 31 of the Bihar prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act of 2016'), whereunder if the commission of the offence is alleged against a company, the person who are acting as a Chief Executive or Incharge of the establishment may not be held liable for punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent for commission of such offence. As per explanation to the said provision, the word "company" shall mean and include a firm or other association of individuals; and director in relation to the firm, means a partner in the firm.

12. Having heard learned counsel for the parties and on perusal of the records, this court finds that no doubt



there is a serious allegation whereunder it is stated that some huge amount of illicit liquors were seized from the premises in question but then after lodging of the F.I.R. for the same, the guilt is still required to be proved against the accused and the accused has a defence available in terms of second proviso to section 31 of the Act of 2016.

13. This court is, thus, of the considered opinion that merely because one F.I.R. has been lodged, taking note of the same the allotment could not have been cancelled. The authorities of the 'BIADA' perhaps also understood this position and only because of that they decided to issue a show cause notice to the petitioner calling upon him to explain as to why not the allotment be cancelled. Once a show cause notice has been issued and a reply thereto has been submitted by the petitioner, in all fairness, equity and justice the authorities of the 'BIADA' were obliged to look into the reply, examine the same and if necessary by conducting a brief inquiry into the matter could have taken a decision on the reply of the petitioner. In the present case, no such exercise has been undertaken. The impugned order issued by the Executive Director, 'BIADA' as contained in



Annexure-7 to the writ application is at least not showing any deliberation or application of mind on the reply filed by the petitioner. This being the position, the impugned order cannot be saved at this stage.

14. The appellate order dated 27.11.2018 as contained in Annexure-10 as well as order the order dated 20.06.2018 as contained in Annexure-7 issued under the signature of the Executive Director, 'BIADA' are hereby set aside.

15. The Managing Director, 'BIADA' shall now proceed from the stage of reply of the petitioner and would take a final decision considering the submissions of the petitioner and the legal position. Such exercise will be completed within a period of 60 days from the date of receipt/production of a copy of this order.

16. This writ application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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