IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22527 of 2018

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M/s Enaviya Food and Beverage Pvt. Ltd., a Company registered under the Companies Act, 2013, and having its registered office at 15/12, Kamruddinganj, Bihar Sharif, Nalanda-803101, Bihar, through its Managing Director & Authorized Person-Sanjay Kumar, Son of Mr. Jainendra Kumar, Resident of Mohalla- Kamruddinganj, P.S.- Laheri, District- Nalanda.

... ... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Industries Department, Government of Bihar, Patna.
2. The Principal Secretary, Industries Department, Government of Bihar, Patna.
3. The Director, Food Processing, Government of Bihar, Patna.
4. The Director Industries, Government of Bihar, Patna.
5. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
6. The General Manager (Revenue), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
7. The Electrical Executive Engineer H.T. Cell, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli, Adv.
		Mr. Prince Kumar Mishra, Adv.
		Mr. Sanket, Adv.
For the State	:	Mr. Rakesh Ambastha, AC to AAG-7
For the Power Company:		Mr. Prakash Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

5 16-01-2019 Heard learned counsel for the petitioner, learned counsel representing the State as well as the South Bihar Power Distribution Company Ltd.

This writ application has been preferred seeking a writ of mandamus commanding the respondent South Bihar Power Distribution Company Ltd. (hereinafter referred to as the 'SBPDCL') to admit the petitioner company for the benefit of subsidy in connection with AMG/MMG/Electricity Duty under

Industrial Incentive Policy, 2011 in terms of memo no.3175 dated 12.09.2018 issued under the signature of Director (Industries), Government of Bihar, Patna.

Learned counsel for the petitioner submits that, while the petitioner was expecting grant of subsidy in terms of the Industrial Incentive Policy, 2011, the petitioner was served with letter no.3108 dated 01.10.2018 issued under the signature of Electrical Executive Engineer, HT Cell, SBPDCL by which a notice under 56 of the Electricity Act, 2003 was served upon the petitioner with a stipulation that the electric connection of the petitioner-company will be disconnected if the dues amounting to Rs.642032/- is not deposited within fifteen days. At this stage, the Court has been informed that the electric connection has already been discontinued because failure of the petitioner to deposit the aforesaid amount.

On the last date, when the matter was taken up for consideration, Mr. Vinay Kirti Singh, learned senior counsel representing the SBPDCL made a categorical statement that no counter affidavit is required to be filed on behalf of the Power Company. Learned counsel for the State had made a submission that one opportuity may be granted to the State to file a counter affidavit. Taking note of the notice printed on the front page of the cause list when it was found that State had failed to file counter affidavit, the State was granted one opportunity to file counter affidavit with a cost of Rs.5,000/- to be deposited with the Member Secretary, Bihar State Legal Service Authority. A receipt showing deposit of the amount has been enclosed as Annexure-A to the counter affidavit filed on behalf of the State.

Surprisingly, despite stand taken that no counter affidavit is required on behalf of the Power Company, without seeking leave of this Court, a counter affidavit has been filed on behalf of the Power Company on 08.01.2019. This approach of the Power Company to file counter affidavit without seeking leave of the Court in a case in which specific stand has been taken that no counter affidavit is required to be filed is liable to be deprecated. In the interest of justice, this Court accepts the counter affidavit on the record but with a cost of Rs.5,000/- to be deposited by the Power Company with the Member Secretary, Bihar State Legal Service Authority within two weeks from today and file the receipt thereof. In future, the respondent Power Company should be cautious in taking such a stand in the Court and in case any such stand is taken, a counter affidavit may be filed subsequently only after seeking leave of the Court.

Now, coming to the present case, what has transpired from the counter affidavit filed on behalf of the respondent State and it's authorities is that there is a change in their stand. Earlier, the name of the petitioner-company was included in the list of the industrial units which were found entitled to get the subsidy under the Industrial Incentive Policy, 2011. In fact in the very prayer portion of the writ application, the basis of seeking a writ of mandamus by the petitioner is the memo no.3175 dated 12.09.2018 issued under the signature of the Director (Industries), Government of Bihar, Patna present at Annexure-P/6 to the writ application.

At this stage, it appears from Annexure-B to the counter affidavit filed on behalf of the Department of Industries that vide letter no.3555 dated 02.11.2018 the General Manager (Revenue) of the Power Company requested the Director (Industries) to clarify as to whether the three units including the petitioner's unit, who have gone in commercial production after 30.06.2016, would be eligible for remission in AMG/MMG/Demand/Billing Demand/Electricity Duty under the Industrial Incentive Policy, 2011. On receipt of the said communication, the Director (Industries) has vide his letter no. 4099 dated 22.11.2018 directed the General Manager (Revenue) of the Power Company to keep the action stayed towards grant of subsidy in respect of the three units. The communication, as contained in letter no.4099 dated 22.11.2018, is present at Annexure-6 to the counter affidavit of the State.

Mr. Mrigank Mauli, learned counsel representing the petitioner submits that a perusal of Annexure-C to the counter affidavit of the State would show that the Director (Industries) has simply written to the General Manager (Revenue) to stop action towards the grant of subsidy to the three units. There is no application of mind and the petitioner was never called upon to show its entitlement prior to issuance of Annexure-C to the counter affidavit. It is, however, submitted that once the petitioner was found entitled to the subsidy, any action to stop the said benefit to the petitioner, which was detrimental to the interest of the petitioner could not have been taken in the manner it has been done, thus in all fairness, equity and justice the petitioner was required to be heard before taking any such action.

On the other hand, learned counsel for the State as well as the Power Company have taken a common stand saying that under the Industrial Incentive Policy, 2011 only those units who have gone in commercial production on or before 30.06.2016 would be entitled for grant of subsidy. It is submitted that since the petitioner has gone in commercial production only on 20.03.2017, on the clarification asked by the General Manager (Revenue) of the Power Company, the Director (Industries) has rightly decided to stop payment of subsidy to the petitioner's unit.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that vide Annexure-P/6 to the writ application, the petitioner's name was included in the list of eligible units for grant of subsidy under the Industrial Incentive Policy, 2011. Even though a legitimate expectation alone may not be enough to seek a writ of mandamus, but in the facts and circumstances, this Court is of the considered opinion that once the petitioner was found entitled being eligible to get subsidy amount under the Industrial Incentive Policy, 2011, before taking any action to the detriment of the petitioner, it was incumbent upon the respondent authorities to give him an opportunity of hearing and then a reasoned order was required to be passed so that the petitioner could have come to know about what has transpired in the mind of the respondent authorities in staying the benefits to the petitioner.

By not doing that, the respondent authorities have violated the principles of natural justice and this Court is, therefore, inclined to direct the respondent authorities particularly the Director (Industries), Government of Bihar, Patna (respondent no.4) to consider the issue of eligibility of the petitioner to get the subsidy benefit under the Industrial Incentive Policy, 2011, for this purpose he would give an opportunity of hearing to the petitioner and shall pass a reasoned order within a period of sixty days from the date of receipt/production of a copy of this order.

So far as the prayer of the petitioner to quash the letter no.3108 dated 01.10.2018 issued by the Electrical Executive Engineer, HT Cell, SBPDCL is concerned, this Court is of the opinion that the said letter has not been challenged on any legal ground, the only issue which has been raised by the petitioner is that because of non-grant of subsidy within the given time frame, the petitioner-company could not gather its resources well in time to pay the electricity bills. The consequences for non-grant of subsidy may be a reason in form of non-payment of electricity bills, but sitting in its writ jurisdiction this Court cannot stretch its power to issue a writ of certiorari based on certain assumptions, thus, this Court is not inclined to interfere with the letter no.3108 dated 01.10.2018. If the petitioner-company is willing to represent its matter before the Electrical

Executive Engineer, HT Cell, SBPDCL or any other competent forum he may do so within a period of thirty days and if such a representation is made the Electrical Executive Engineer/competent forum as the case may be shall take an appropriate decision including for restoration of the electric connection of the petitioner on payment of substantial outstanding amount.

The writ application stands disposed off.

(Rajeev Ranjan Prasad, J)

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