

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12104 of 2018

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M/s. Sunny Stars Hotels Private Limited, a Private Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at West of Ramgulam Chowk, South Gandhi Maidan, P.S. Gandhi Maidan, Town and District Patna (commonly known as Hotel Panache) through its Director Dileep Kumar, son of Late Nageshwar Prasad Singh, Resident of Top Floor, R.K. Plaza, Nala Road, Rajendra Nagar, P.S. Kadamkuan, Town and District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industry, Government of Bihar, Patna.
3. The Director of Industries, Department of Industry, Government of Bihar, Patna.
4. The Deputy Commissioner of Commercial Taxes, In-Charge Gandhi Maidan Circle, Patna.
5. The General Manager, District Industry Centre, Patna.

... .. Respondent/s

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with

Civil Writ Jurisdiction Case No. 15496 of 2018

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M/s. Manokamna Infraresources LLP, a Limited Liability Partnership Firm having its registered office at Debi Chowk, Patna City, Patna through one of its Partner, namely, Prashant Banka, son of late Pawan Kumar Banka, Resident of 402, Venkatesh Apartment, Budh Marg, P.S. Kotwali, Town and District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Commercial Taxes, Vikas Bhavan, Bailey Road, Patna.
2. The Principal Secretary, Department of Industry, Vikas Bhavan, Bailey Road, Patna.
3. The Director of Industries, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Deputy Commissioner of Commercial Taxes, In-Charge Gandhi Maidan Circle, Patna.
5. The General Manager, District Industry Centre, Patna.

... .. Respondent/s



With
Civil Writ Jurisdiction Case No. 2981 of 2019

M/S Vitra India Glass Private Limited, a Company registered under Indian Companies Act, 1956, having its registered Office at Shyam Centre, G-6, Exhibition Road, Patna- 800001, through its Director, Vishal Kumar, Son of Late Mahesh Prasad Gupta, Resident of G/90, P.C. Colony, P.O. + P.S.- Kankarbagh, Patna, Bihar, Pin- 800020

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Development Commissioner-cum-Chairman, State Investment Promotion Board, Bihar, Patna.
3. The Principal Secretary, Industries Department, Government of Bihar, Patna.
4. The Director Industries, Department of Industries, Government of Bihar, Patna.
5. The Director (Technical) Development, Department of Industries, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 12104 of 2018)

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv. with
Mr. Mohit Agarwal, Adv.
Ms. Priya Gupta, Adv.

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

(In Civil Writ Jurisdiction Case No. 15496 of 2018)

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv. with
Mr. Mohit Agarwal, Adv.
Ms. Priya Gupta, Adv.

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

(In Civil Writ Jurisdiction Case No. 2981 of 2019)

For the Petitioner/s : Mr. Mrigank Mauli, Adv.
Mr. Sanjay Kumar, Adv.
Mr. Sanket, Adv.

For the Respondent/s : Mr. Prince Kumar Mishra, Adv.

Mr. Kinkar Kumar, SC-9
Mr. Yogesh Kumar, AC to SC-9

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 29-07-2019



The petitioners in each of the three writ petitions filed under Article 226 of the Constitution of India have a common grievance and that is the rejection of their respective claims for the benefits/incentives admissible under the Bihar Industrial Incentive Policy, 2011 (hereinafter referred to as the 'Industrial Policy, 2011') by the Director, Industries, Bihar, Patna through separate orders as impugned in the respective writ petitions, inter alia, on grounds 'that their proposal does not have the approval of the Competent Authority'. Since the grievance of the petitioners in this batch is common, that the writ petitions have been heard analogous and are being disposed of at the stage of admission with the consent of the parties.

To demonstrate the commonness in the relief prayed by the respective writ petitioners I am persuaded to reproduce the same hereunder:

Re: CWJC No.12104 of 2018:

- (i) For direction to the Respondent Commissioner of Commercial Taxes as also the Deputy Commissioner of Commercial Taxes to restore the VAT Reimbursement of amount of VAT deposited by the petitioner in terms of the Industrial Policy Resolution, 2011 as the same has been abruptly discontinued in most arbitrary and illegal manner by the respondents;
- (ii) For a declaration that the respondent cannot discontinue the reimbursement of the amount of VAT deposited by the petitioner in terms of the promise made by the State in the Industrial Policy Resolution, 2011;



- (iii) For a direction to the respondents i.e. Department of Industry, Government of Bihar for grant of the Capital Subsidy and other subsidies promised by the respondent State of Bihar under the Industrial Incentive Policy, 2011;
- (iv) For a direction to the respondents to grant other incentives promised in the Industrial Incentive Policy, 2011 like Subsidy on Luxury Taxes, investment on Plant & Machinery purchased for Captive Power Generation, i.e. D.G. Set, Project Report Incentive, Exemption from Monthly Minimum Charges/Minimum Bases Energy Charges etc.;
- (v) For a direction to the respondents for grant of subsidies at the earliest to save the petitioner's unit as it is suffering due to discontinuance of reimbursement of the amount of VAT deposited by the petitioner and also for non-grant of the amount of capital subsidy and other subsidies; and/or for any other relief(s) for which the petitioner may be found entitled to in the facts & circumstances of the present case.

Re: CWJC No.15496 of 2018:

- (i) For a direction to the respondent Commissioner of Commercial Taxes as also the Deputy Commissioner of Commercial Taxes to restore the VAT Reimbursement of amount of VAT deposited by the petitioner in terms of the Industrial Policy Resolution, 2011 as the same has been abruptly discontinued in most arbitrary and illegal manner by the respondents;
- (ii) For a declaration that the respondent cannot withhold the reimbursement of the amount of VAT deposited by the petitioner in terms of the promise made by the State in the Industrial Policy Resolution, 2011;
- (iii) For a direction to the respondents i.e. Department of Industry, Government of Bihar for grant of the Capital Subsidy and other subsidies promised by the respondent State of Bihar under the Industrial Incentive Policy, 2011;
- (iv) For a direction to the respondents to grant other incentives promised in the Industrial Incentive Policy, 2011 like investment on Plant & Machinery purchased for Captive Power Generation, i.e. D.G. Set, Project



Report Incentive, Exemption from Monthly Minimum Charges/ Minimum Bases Energy Charges etc.;

- (v) For a direction to the respondents for grant of subsidies at the earliest to save the petitioner's unit as it is suffering due to discontinuance of reimbursement of the amount of VAT deposited by the petitioner and also for non-grant of the amount of capital subsidy and other subsidies; and/or for any other relief(s) for which the petitioner may be found entitled to in the facts & circumstances of the present cases.

Re: CWJC No.2981 of 2019:

- (a) For issuance of order/orders, direction/directions or writ/writs in the nature of mandamus directing the respondent authorities to reimburse the petitioner company subsidy under the heading of Value Added Tax (for brevity 'VAT')/Central Sales Tax (for brevity 'CST')/ Bihar Tax on Entry of Goods into Local Areas for Consumption (for brevity 'Bihar Entry Tax Act') in terms of Clause (i) of the Industrial Incentive Policy, 2011 (hereinafter referred to as 'the IIP 2011') for the period of 01.01.2016 to 30.06.2017 to the tune of Rs.1,05,92,000/- (One Crore Five Lakh and Ninety Two Thousand only).
- (b) For issuance of writ in nature of Mandamus directing the respondents authorities to admit the petitioner company to the benefit of reimbursement of the admissible Value Added Tax/Central Sales Tax/Entry Tax ('VAT/CST/ET' for short) in terms of Clause 3(i) of the Industrial Incentive Policy, 2011 (hereinafter referred to as 'the Policy') for a period of 10 years from the date of coming into Commercial Production, i.e. 18.12.2015 and in terms of the approval granted by the authorities prescribed under Memo No.2446 dated 15.07.2011 and be further pleased to direct the respondent State to allot and disburse appropriate fund to the Commercial Taxes authorities for its onward disbursement to the petitioner company.
- (c) For holding that the inordinate delay in reimbursement of VAT/CST/Entry Tax in terms of Bihar Industrial Incentive Policy, 2011 to the petitioner company even after making the entire investment as well as grant of approval of State Investment Promotion Board (for



brevity 'SIPB'), Bihar, Patna is unjust, illegal and arbitrary.

- (d) For issuance of such other order/orders, direction/directions, writ/writs which the petitioner may be entitled to.

Mr. S.D. Sanjay, learned senior counsel has appeared on behalf of the petitioners in CWJC No.12104 of 2018 and CWJC No.15496 of 2018 with the assistance of Mr. Mohit Agarwal and the petitioner in CWJC No.2981 of 2019 is represented through Mr. Mrigank Mauli. While Mr. Kinkar Kumar, learned Standing Counsel No.11 appears on behalf of the State in CWJC No.2981 of 2019, Mr. Vikash Kumar, learned Standing Counsel No.11 appears for the State in the remaining two writ petitions.

The facts of the case leading to the writ petitions lie in a very narrow compass and for the sake of convenience the bare essential facts accompanying each of the writ petitions are given hereunder:

Re: CWJC No.12104 of 2018:

The petitioner is a private limited company incorporated under the Companies Act, 1956 on 22.05.2012 bearing Corporate Identity No.U55101BR2012PTC018705 and has its registered office and works at West of Ram Gulam Chowk, South Gandhi Maidan, Patna-800001. The certificate of incorporation is enclosed at Annexure 1.



The Government of Bihar came out with 'Industrial Policy, 2011' to promote industrial development within the State on review of the Bihar Industrial Incentive Policy, 2006 and the change in Global Incentive Scenario, with the pious object of attracting domestic and foreign investment as well as for revival and expansion of business operations of the existing industrial units. The policy was approved by the Cabinet before being notified in the official gazette vide Resolution No.691 dated 09.06.2011 of the Industries department which was published in the gazette on 10.06.2011. A copy of the gazette notification is enclosed at Annexure 2 with its English text at Annexure 3 to the writ petition.

The petitioner in order to take advantage of the promise made by the State under the 'Industrial Policy, 2011, applied with all relevant documents seeking permission to set up a Four Star Hotel which was covered under the 'Tourism' category vide item c(7) of Annexure 1 appended to the 'Industrial Policy, 2011' enclosed at Annexures 2 and 3 to the writ petition. The State Investment Promotion Board gave its consent on the proposal for establishment of the Four Star Hotel and which was communicated through letter dated 17.04.2013 of the Director, Technical Development, Department of Industries enclosed at Annexure 8 to



the writ petition. The letter sufficiently indicates that the proposal was approved on the parameters of the 'Industrial Policy, 2011'.

The petitioner completed necessary documentation under the 'Industrial Policy, 2011' for grant of incentives by submitting details in the prescribed format present at Annexures 9 and 10 intimating the commencement of production/activity on 31.01.2014. A certificate to such effect was issued by the Tourism Industry at Annexure 11 which is dated 08.10.2014 and a similar approval to the project was also given by the Government of India on 26.02.2013 at Annexure 11/A. Annexure 12 is Eligibility Certificate issued by the General Manager, District Industries Centre, Patna holding the petitioner entitled to 80% of reimbursement of Value Added Tax deposited under the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the 'VAT Act, 2005') in terms of the incentive provided under the 'Industrial Policy, 2011' and which certificate also certifies that the unit was functional. The petitioner was allowed exemption of 100% luxury tax for a period of 7 years as manifest from the certificate issued by the General Manager, District Industries Centre, Patna at Annexure 13.

It is the complaint of the petitioner that whereas the petitioner continued to deposit the admitted tax under the 'VAT



Act, 2005', he received reimbursement only up to the 3rd quarter of the financial year 2015-16. It is the complaint of the petitioner that as against the deposit of 'VAT' under the 'VAT Act, 2005' for the financial year 2017-18 to the tune of Rs.02,57,48,101/- until the 1st quarter of the financial year 2017-18, the petitioner was entitled to 80% reimbursement to the tune of Rs.02,05,98,480/- but the petitioner was granted reimbursement only to the tune of Rs.96,89,232.43 and an amount of Rs.95,88,012/- until the 1st quarter of the financial year 2017-18 remains pending for reimbursement.

It is when the petitioner pursued the matter that he has been posted with a communication dated 13.10.2017 whereby the claim has been rejected because it does not have the approval of the Competent Authority. The enclosure to the letter contains the name of the petitioner at serial no.1 and informs that since the claim does not have the approval of the Chief Minister it is rejected. A copy of the letter is enclosed at Annexure 19 to the writ petition and it is feeling aggrieved by such action of the respondent-State in its Industries department that the petitioner is before this Court.

Re: CWJC No.15496 of 2018:

The petitioner in this case is a partnership firm incorporated on 21.07.2015 under the provisions of the Limited Liability Partnership Act, 2008 having its registered office at Debi



Chowk, Patna City, Patna 800008. The petitioner is engaged in the business of manufacture of basic metal which manufactures ERW pipe, steel sheet cutting, shutter profile etc. A similar sequence of events as existing in the case of M/s Sunny Stars Hotels Private Limited accompanies the present writ petition as well and even when the claim of the petitioner for grant of incentive under the 'Industrial Policy, 2011' has been approved by the State Investment Board and an Eligibility Certificate was issued for reimbursement of the 'VAT' amount as well as the Capital Subsidy etc. but through letter dated 26.06.2018 impugned at Annexure 15 series, that assigning absence of approval by the Competent Authority, the claim for reimbursement made by the petitioners was rejected in continuation of earlier rejection communicated through letter dated 13.10.2017, of the Director, Industries, Bihar, Patna. It is feeling aggrieved that the said petitioner is before this Court.

Re: CWJC No.2981 of 2019:

The petitioner in this case is a private limited company incorporated under the Companies Act, 1956 having its office at Shyam Centre, G-6, Exhibition Road, Patna. The petitioner is engaged in the manufacture of glass at its plant at Shri Rampur, Fatuha, Patna. It is the complaint of the petitioner that it is being



induced by the promise made by the State Government under the 'Industrial Policy, 2011' that it established a glass manufacturing unit at Village- Shri Rampur in the district of Patna with an investment of Rs.849.72 lacs and submitted proposal for seeking approval of the State Investment Promotion Board which gave its approval on 24.05.2013 as communicated through letter dated 02.08.2013 enclosed at Annexure P/9 to the writ petition.

The petitioner-Company was issued with Udyog Aadhaar bearing No.BR26B0001077 and commenced its production on 18.12.2015. The Company was issued with 'VAT' reimbursement certificate by the General Manager, District Industries Centre, Patna through letter dated 19.03.2016 confirming his eligibility to 80% reimbursement of the tax deposited up to 300% of the investment for a period of 10 years with effect from the date of production i.e. 18.12.2015. A copy of the Eligibility Certificate is at Annexure P/11.

It is because the application filed by the petitioner for reimbursement of the Value Added Tax/Central Sales Tax/Entry Tax in terms of the incentive available under the 'Industrial Policy, 2011' for the period 01.01.2016 to 30.06.2017 to the tune of Rs.1,05,92,000/- met with no response that the petitioner is before this Court and it is by filing counter affidavit that the Director,



Industries, Bihar, Patna has informed that vide order bearing Memo No.3152 dated 13.10.2017 the claim of the petitioner for reimbursement of the tax and for other incentive under the 'Industrial Policy, 2011' has not been approved by the Competent Authority which has been rejected. A copy of the letter of the Director, Industries dated 13.10.2017 is at Annexure R/1A to the counter affidavit filed on behalf of the Industries department and the enclosure thereto contains the list of industries whose claims have been rejected with the name of the petitioner appearing at serial no.34.

Mr. S.D. Sanjay, learned senior counsel has taken this Court through the 'Industrial Policy, 2011' enclosed in the writ petitions and in reference to the one enclosed at Annexure 3 to CWJC No.12104 of 2018 which is the English text of the 'Industrial Policy, 2011' he submits that a complete scheme is spelt out in the Industrial Policy, 2011 which was announced with the avowed object of accelerating industrial development but the action of the respondent-Director, Industries in rejecting the claim advanced by the petitioners on the technicality that 'the proposal does not bear the approval of the Competent Authority' defeats the very object for which the policy was announced.

It is the argument of Mr. Sanjay that the claim of the petitioners is not negated on eligibility rather the only reason



which is assigned by the Director, Industries in the respective letters which communicate the rejection of the claim is, the absence of approval by the Competent Authority. It is submitted that these communications fail to assign any reason and also do not indicate whether the claims in fact, have been rejected by the Competent Authority or they are awaiting approval. According to Mr. Sanjay, the Scheme at Annexure 3 and the subsequent notifications issued thereunder clearly explains the obligation cast on the authority concerned for giving effect to the policy and while every authority responsible under the policy has given approval to the eligibility of the petitioners to draw the benefits under the 'Industrial Policy, 2011', the communication by the Director, Industries citing absence of approval by the Competent Authority, to refuse the incentives to the petitioners, is vague because no reasons are assigned. He further argues that the term 'Competent Authority' is nowhere defined in the 'Industrial Policy, 2011' rather clause 14 of the 'Industrial Policy, 2011' very clearly casts a responsibility on a committee constituted under the Chairmanship of the Principal Secretary, Industries with the Director of Industries, Director Technical Development and representatives of the Commercial Taxes Department and the Bihar State Electricity Board, as its Members, for giving effect to the policy.



Learned senior counsel has invited the attention of this Court to a resolution of the Industries department dated 15.07.2011 (Annexure 5) and in reference to Clause (11) thereof has submitted that the resolution clearly mentions that whosoever fulfills the eligibility terms of the 'Industrial Policy, 2011', would be entitled to the benefits thereunder and an Eligibility Certificate would be issued within a week thereof as has been issued in the case of the petitioners at Annexure 12, by the General Manager, District Industries Centre on 21.03.2014. He submits that a second resolution was issued through Memo No.2437 dated 15.07.2011 in which it was stated that the decision on the eligibility would be taken within 21 days of filing of an application and that such incentive would be given only to such of the units who have their proposal recommended through the District Level Single Window Clearance Committee/State Investment Promotion Board.

He next refers to an order issued by the Industries Department bearing Memo No.2442 dated 15.07.2011 at Annexure 6 to submit that a committee was constituted for giving effect to the 'Industrial Policy, 2011' under the Chairmanship of Director, Industries in so far as the small and medium Industrial units are concerned and in so far as large units are concerned an order



bearing Memo No.2443 dated 15.07.2011 was issued constituting a committee under the Chairmanship of the Principal Secretary.

He submits in reference to the recommendations at Annexure 8 that the Director, Technical Development in consideration of the proposal submitted by the petitioner informed about the approval given by the State Investment Promotion Board in its meeting held on 08.02.2013 and also communicated that the incentives shall be considered separately by the concerned department as per the policy.

In reference to the proposal at Annexures 9 and 10 he submits that it is in consideration of the eligibility of the petitioner to draw benefits under the 'Industrial Policy, 2011' that the Eligibility Certificate for reimbursement of VAT under 'VAT Act, 2005' was issued on 21.03.2014 by the General Manager, District Industries Centre, Patna who also issued a certificate regarding 100% exemption from luxury tax.

Learned senior counsel in reference to the pass-book, the extract of which is enclosed at Annexure 14 submits that while the deposits made by the petitioner towards 'VAT' is entered therein, the petitioner could get reimbursement only up to the 3rd quarter of the financial year 2015-16. In reference to the paragraph 29 of the writ petition he submits that as until 1st quarter of the financial year



2017-18 while the respondents have reimbursed 'VAT' to the tune of Rs.96,89,232.43, an amount to the tune of Rs.95,88,018/- yet remains pending for reimbursement.

It is the submission of Mr. Sanjay that while the counter affidavit filed on behalf of the Commercial Taxes department has its own reasons, the Industries department simply attributes the refusal to the non-approval of the case of the petitioners by the Competent Authority. It is argued that the counter affidavit nowhere explains as to who is the competent authority and why midway through the period, the benefits extended to the petitioners, was stopped. He submits that while the incentives/benefits towards investment on plant and machinery, under Clause 2(5), towards the Monthly Minimum Charges and even towards the tax incentives was extended to the petitioner until the 1st quarter of 2017-18 but it was abruptly stopped thereafter on a vague reason.

Learned counsel has stated that the ground assigned by the respondents is frivolous and not founded on justifiable reasons. In reference to the judgment of this Court rendered in the case of **M/s Suprabhat Steel Ltd. Vs. The State of Bihar** since reported in **1995 (2) PLJR 536** and to the opinion of the Division Bench present at paragraphs 1, 4, 5 and 12, he submits that once the



petitioners were found eligible for being extended the incentive under the 'Industrial Policy, 2011', the respondents had no option but to give effect to the promise made thereunder. According to learned counsel where the eligibility of the petitioners, to come under umbrella of the policy is not in dispute, the respondents cannot hide behind the issue of lack of approval by the Competent Authority to deny the benefits especially where due sanction is given to the proposals by the concerned authorities under the policy.

Learned counsel in reference to the judgment of the Supreme Court in the case of **Suprabhat Steel** reported in **(1999) 1 SCC 31** has submitted that the view of the Division Bench of this Court was affirmed by the Supreme Court. Placing reliance on the judicial opinion, it is argued that the respondents cannot be permitted to retract from their promise made under the policy.

It is the argument of Mr. Sanjay that the case of the petitioners in CWJC No.15496 of 2018 is identical on the sequence of events and even the reasons for denial of the incentives rests on the non-grant of approval by the Competent Authority.

Mr. Mrigank Mauli has appeared for the petitioner in CWJC No.2981 of 2019 and while going along with the arguments



advanced by Mr. Sanjay, has invited the attention of the Court to the Bihar Single Window Clearance Act, 2006 (hereinafter referred to as the 'Act of 2006') at Annexure P/3 to the writ petition to submit that the confusion whatsoever on the issue of 'Competent Authority' is answered by the definition present at section 2(2) of the said Act which defines the 'Competent Authority' to mean any department or the Agency of the Government, a Gram Panchayat, or a Municipality or any other local body, which is entrusted with the powers and responsibilities to grant or issue clearance. He submits that the said Act was enacted in 2006 for providing speedy clearances and certificates required for setting up of Industrial undertakings for all round development of the State and for providing investor friendly environment. He thus argues that even though the term 'Competent Authority' as relied upon by the State to deny the benefits to the petitioner, is not defined in the 'Industrial Policy, 2011' but considering the import of the 'Act of 2006' and its overriding effect in terms of section 23, at best, the role of the 'Competent Authority, can be assigned on the State Investment Promotion Board, who have already granted clearance/approval to the petitioner for drawing benefits under the 'Industrial Policy, 2011' and thus the Industries department cannot deny the incentive to the petitioner because, according to them, it



is the Chief Minister who is to grant approval to the proposal and since these proposals have not been approved by the Chief Minister the incentive cannot be extended to the petitioner.

Learned counsel has submitted that once the petitioner is found eligible for drawing incentives under the 'Industrial Policy, 2011', the State cannot revert back to deny the same on grounds that the proposal does not have the approval of the Chief Minister. According to Mr. Mauli, since the claim has the approval by the concerned department as manifest from different enclosures to the writ petition, the respondent-State cannot be allowed to hide behind the technicality of approval, to deny the incentives, if otherwise, the petitioner is found eligible under the 'Industrial Policy, 2011' especially where there is nothing in the counter affidavit which holds the petitioner ineligible for grant of such incentives.

Learned counsel in support of his submission has relied upon the following judgments of the Supreme Court:

- (1) AIR 1992 SC 152 (Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes), paragraphs 4,11 and 12;**



- (2) **(1992) 3 SCC 78 (Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-III, Bombay), paragraphs 3, 5 and 7.**
- (3) **1989 Supp. (2) SCC 523 (Commissioner of Income Tax, Amritsar vs. Straw Board Manufacturing Co. Ltd.), paragraph 5.**
- (4) **(2007) 11 SCC 447 (Kusheshwar Prasad Singh vs. State of Bihar), paragraphs 14 to 16.**
- (5) **2017 (4) PLJR 956 (Binay Shankar Shukla vs. The State of Bihar).**
- (6) **2017(1) PLJR 46 (Santosh Kumar vs. The State of Bihar), paragraphs 5 and 6.**
- (7) **2018 (2) PLJR 558 (Radha Flour Mill (P) Ltd. Vs. The State of Bihar), paragraphs 13 to 15.**
- (8) **AIR 1993 Madhya Pradesh 202 (Shri Bajrang Extraction Pvt. Ltd. vs. Secretary, Government of M.P.), paragraph 16.**

The writ petitions have been contested by Mr. Vikash Kumar, learned Standing Counsel No.11 and Mr. Kinkar Kumar, learned Standing Counsel No.9 and their entire arguments revolve around the stand taken by the respondents in their respective counter affidavit and which is that, since the Competent Authority



has not approved the case of the petitioners for grant of incentives, that their cases have been rejected. There is nothing further in the arguments of the respective counsel which requires to be recorded because no objection is raised on the merits of the claim or on the eligibility of the petitioners to draw the incentives.

Each of the counter affidavits filed in the three writ petitions has identical stand taken by the respondent-State in its Industries department and since identical stand has been taken by the State in each of the cases, I am persuaded to reproduce the statement made in paragraphs 17 to 20 of the counter affidavit filed in CWJC No.12104 of 2018 which reads as under:

“17. That it is stated that although in the case of the present petitioner there is recommendation and consent of the State Investment Promotion Board (SIPB for short) as stated above, however, there is no approval of the ‘competent authority’ and therefore, the petitioner is not entitled for any benefit flowing from the 2011 industrial Incentive Policy, rather the petitioner may apply afresh under the 2016 Industrial Incentive Policy and seek the incentives in accordance with the procedure prescribed therein.

18. That it is stated that it is true that earlier petitioner was reimbursed CAT subsidy as stated by the petitioner in para 29 onwards of the writ application, however, it is most humbly stated and submitted in this regard that till the Financial year 2016-17, value Added Tax reimbursement was done to the Commercial Tax Department by allotting funds directly to the Commercial Tax Department and then the said department used to reimburse VAT subsidy to the Units/assesseees and in such process those units who did not have the approval of the ‘competent



authority' they were also granted VAT reimbursement although they were not entitled for the same legally.

19. That it is stated that from the financial year 2017-18 the process of setting claim was done through online system and upon receipt of the application online, at the industry department level the same is analyzed to appreciate the legal claim and it is only after satisfaction that the project has all the approvals including the approval of the 'competent authority' the same is forwarded to the Commercial Tax Department for VAT reimbursement.

20. That it is stated that in that process, it was seen and observed that although the petitioner did not have the approval of the 'competent authority' yet, it was granted VAT reimbursement and accordingly, it was found to be not entitled for any incentive and subsidy under the 2011 policy including capital subsidy as well as other incentives which led to stoppage of the VAT reimbursement."

For explaining the term 'Competent Authority' the Industries department has relied upon the resolution dated 16.01.2006, a copy of which is enclosed at Annexure 'A' to the said counter affidavit and in reference to Clause 2.2 it is stated that it is only after getting approval from the 'Competent Authority' i.e. the head of the Government that admissible benefits are to be extended to any eligible unit. Such is the statement made in paragraphs 10 to 13 of the counter affidavit.

"10. That it is stated that after receiving the recommendations of these committees, the proposal(s) is/are placed before the 'competent authority' as defined in notification no.128 dated 16.01.2006 for approval whose approval is mandatory depending upon the financial aspect



involved in the project as per Clause 2.2 of the Notification No.128 dated 16.01.2006.

11. That it is stated that it is only after the approval of the Competent Authority, the admissible benefits are supposed to be given to any eligible Unit.

12. That it is stated that there is a rationale for keeping the requirement of approval by the 'competent authority', as by that process when the SIPB recommendation/advice is received by the 'competent authority' as per the mandate of Clause 2.2 of the Notification dated 16.01.2006 (Letter No.126), the Head of the Government gets an opportunity to see the nature of the project, the sector which the project is going to cover, the employment which the project is going to generate, the future prospect of the project, the tax revenue which in future, the project may generate, the project's viability and the need to provide financial assistance to such project, and they all are relevant factors for approval and therefore, it is only after approval by the 'competent authority' project is disbursed subsidy by the executive representing the Industries Department as serious financial implications arise whenever subsidy is disbursed to any project proponent.

13. That it is stated that a unit cannot claim subsidy as a matter of right merely on the basis of advice of these recommending bodies (SIPBs), unless the project itself is approved by the 'competent authority' for disbursement of subsidy followed by adherence to conditions prescribed under different notifications issued in this regard."

On the other hand, the Commercial Tax department takes a different stand to deny the benefits and attributes the stoppage of reimbursement of VAT amount to the change in the procedure of tax reimbursement on the announcement of the Bihar Industrial Investment Promotion Policy, 2016 upon promulgation of the



Bihar Industrial Investment Promotion Act, 2016 (hereinafter referred to as the 'Act of 2016'). As per the Commercial Taxes Department upon such change, the claim application now have to be submitted online for tax reimbursement to the Industries department who would examine and dispose of the same. It is stated that it is after the allotment of fund that the Commercial Tax department would draw bill from the Government Treasury for making reimbursement to the incumbent and since the petitioner has not applied under the changed procedure for reimbursement of the VAT amount, the Commercial Tax department cannot be held responsible for the same.

Having considered the rival submissions and the materials on record, one thing is clear and i.e. that there is no dispute on eligibility of these petitioners to draw incentives because while all the petitioners have been found eligible for drawing incentives under the 'Industrial Policy, 2011' as accepted by the respondent-State in its Industries department in the counter affidavit so filed and whereas the petitioners in CWJC No.12104 of 2018 and CWJC No.15496 of 2018 have also drawn the benefits under the 'Industrial Policy, 2011' for some period, the third petitioner, awaiting such incentive, has approached this Court and when it is informed that since the Competent Authority did not



approve the case of the petitioner(s) that the benefit under the 'Industrial Policy, 2011' has been denied to them and even if two of the writ petitioners have drawn incentive over the period, it was not lawful. The Commercial Tax department on the other hand attributes stoppage of reimbursement to the change in procedure under the Bihar Industrial Investment Promotion Policy, 2016 read alongside the provisions of the 'Act of 2016'.

Having noted the arguments advanced by learned counsel appearing on behalf of the petitioners as contested by learned counsel appearing for the State in reference to the stand taken in the counter affidavits in my opinion, the petitioners herein have been subjected to unwarranted litigation by the respondents by raising a bogie of 'lack of approval by the 'Competent Authority' i.e. the Head of the Government', when the documents on record confirm to the approval given by the Competent Authority under the 'Industrial Policy, 2011'.

I have noted the arguments advanced by learned counsel for the petitioners as contested by learned counsel for the State, in reference to the stand taken by the Industries department and Commercial Taxes department in their respective counter affidavits filed in the writ petitions. In my considered opinion the objections raised by the Industries department which has led to the filing of



the writ petitions lacks foundation and has unnecessarily generated an otherwise avoidable litigation.

The entire gamut of arguments revolves around the bogie raised by the respondent Industries department through the Director, Industries as regarding lack of approval to the proposals of the petitioners for grant of incentives under the 'Industrial Policy, 2011' by the Competent Authority which, according to the respondent authorities in the Industries department, would be the Head of the Government as manifest from their stand present at paragraph 12 of the counter affidavit which I have reproduced above and which understanding of the Industries department is in view of the stipulations present at paragraph 2.2 of the Notification No.128 dated 16.01.2006 issued under the 'Industrial Policy, 2006'.

The fallacy in the objections raised and the absolute lack of foundation for obstructing the incentives admissible to these petitioners under the 'Industrial Policy, 2011' can be understood by the circumstances discussed hereinafter which is borne from the records of the proceedings.

The Industries department has relied upon Clause 2.2 of the Notification No.128 dated 16.01.2006 to raise the objection on lack of approval by the Competent Authority i.e. the Head of the



Government, a copy of which is enclosed at Annexure A to the counter affidavit and which, inter alia, provides that any project which involves an investment up to Rs.100 crores would have to be approved by the Chief Minister/Governor (in case of President Rule) and in respect of projects involving investment exceeding Rs.100 crores the same would have to be approved by the Chief Minister on recommendation/approval by the Cabinet.

The resolution so relied upon by the respondent authorities in its Industries department dated 16.01.2006 undisputedly was issued under the 'Industrial Policy, 2006' and not the 'Industrial Policy, 2011'. On the other hand, the issue in hand relates to the benefits/incentives under the 'Industrial Policy, 2011' the text of which has been placed on record at Annexure 2 (Hindi version) and Annexure 3 (English version) in CWJC No.12104 of 2018. Now the very opening paragraph of the 'Industrial Policy, 2011' informs that it is on review of the Bihar Industrial Incentive Policy, 2006 and keeping in view the rapid changes in the Global Industrial Scenario that the Bihar Industrial Incentive Policy, 2011 was announced with an objective to attract domestic and foreign investment as well as the revival and expansion of business operations of the existing industrial units by providing the right industrial ambience. For the sake of convenience I am persuaded



to reproduce paragraphs 1 and 2 of the English text of the
'Industrial Policy, 2011' which runs under:

"In view of the rapid changes in the Global Industrial Scenario, Bihar Industrial Incentive Policy-2006 has been reviewed with an objective to attract domestic and foreign investment as well as revival and expansion of business operations of the existing industrial units by providing the right industrial ambience. After reviewing the same, it was felt that in view of the present scenario, it is imperative that a new industrial incentive policy be prepared so as to promote balanced industrial development and enable industries to contribute towards the social and economic development of the State.

In the above background, a new Industrial Incentive Policy-2011 has been prepared based on the suggestions and consultations with the main Industry Associations such as- Bihar Industries Association, Bihar Chamber of Commerce, Confederation of Indian Industry, Bihar, Laghu Udyog Bharti, Hazipur Udyog Sangh etc. and other related organizations and concerned Government Departments. The industrial policies of different neighbouring State have also been considered in formulation of this policy."

There is thus no confusion that it is upon review of the
'Industrial Policy, 2006' that the new 'Industrial Policy, 2011' was
framed with fresh stipulation and fresh prescriptions.

I would straightaway go to Clause 14 of the 'Industrial Policy, 2011' which provides for the constitution of a Competent Authority to clarify and provide solutions to the issues arising as well as for taking decisions thereon, for effective implementation of the policy, which runs under:



‘14. In order to clarify or explain any provisions contained in this Policy and for providing solutions, a committee would be constituted under the Chairmanship of Principal 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.’”

The State Government having prescribed the manner of implementation of the ‘Industrial Policy, 2011’ in the matter of grant of incentives provided therein does not stop by simply providing for the constitution of a committee at paragraph 14 rather for an effective implementation of the policy, the Principal Secretary, Industries department has issued resolutions and orders which have been placed on record of the proceedings. Annexure 4 is a resolution bearing Memo No.2446 dated 15.07.2011 which deals with the incentives under the Value Added Tax Act, 2005. The resolution at Annexure 5 bearing Memo No.2437 dated 15.07.2011 issued by the Principal Secretary, Industries department again deals with grant of subsidies to the eligible industrial units.

The order of the Principal Secretary, Industries department bearing Memo No.2442 dated 15.07.2011 constitutes a committee for small and medium industrial units to be chaired by the Director, Industries with other senior officials in the Industries



department as the Members of the said committee for the purpose of implementation of the 'Industrial Policy, 2011 and in so far as large industries are concerned vide order bearing Memo No 2443 dated 15.07.2011 the Principal Secretary, Industries department has constituted a committee to be chaired by himself with the Director, Industries, the Principal Secretary, Commercial Taxes department, the Member representative of the Bihar Industries Association, the Bihar Chamber of Commerce, the Director, Technical Development etc. as its Members. The said order is enclosed as a part of Annexure 6.

Annexure 7 is a resolution of the State Government in its Industries department in laying down the procedure for grant of subsidy on establishment of Captive Power Plant/Diesel Generating Set/Non-Conventional form of energy under the 'Industrial Policy, 2011' bearing Memo no.2438 dated 15.07.2011. A committee to examine the grant of subsidy for establishment of such Captive Power Plant, Diesel Generating Set and non-conventional source of energy is also constituted vide resolution bearing Memo No.2444 dated 15.07.2011 of the State Government in its Industries department at Annexure 7/A.

I have consciously referred to these orders and resolutions of the State Government in its Industries department



issued under the signature of the Head of the department i.e. the Principal Secretary, Industries which have been issued for effective implementation of the 'Industrial Policy, 2011' under the enabling provided thereunder.

In my considered opinion, where the 'Industrial Policy, 2011' itself is providing for the manner of consideration and disposal of the claims raised by the industrial units and is followed by a series of resolutions taken and orders passed by the State Government in its Industries department as demonstrated above and where there is no dispute that the proposals of these petitioners have the sanction of the Competent Authority under the 'Industrial Policy, 2011' as manifest from the enclosures to the respective writ petitions and which stands noted in the argument of learned counsel for the petitioners, where was the occasion for the Director, Industries to put a spanner by raising a bogie of non-grant of approval by the Competent Authority in reference to Clause 2.2 of the resolution dated 16.01.2006 which confirmingly was issued to implement the 'Industrial Policy, 2006' and has not been saved by the 'Industrial Policy, 2011'.

In my opinion the stand taken by the Director, Industries as present in his letter dated 13.10.2017 impugned at Annexure 19 to CWJC No.12104 of 2018 and Annexure R/1A to CWJC



No.2981 of 2019 together with the order dated 26.06.2018/31.10.2017 impugned at Annexure 15 series to CWJC No.15496 of 2018 is not only illegal but a gross case of abuse of executive power for the following reasons.

The 'Industrial Policy, 2011' having been announced on review of the 'Industrial Policy, 2006', it is a malafide act on the part of the Director, Industries to make a reference to the stipulations present in the resolution dated 16.01.2006 issued under the 'Industrial Policy, 2006' which would stand superseded by the 'Industrial Policy, 2011', especially where there is no provision present in the 'Industrial Policy, 2011' which proceeds to save the resolution. In fact except for the stipulation present at paragraph 10 of Annexure 1 accompanying the 'Industrial Policy, 2011' giving option to such of the industrial units which had not commenced commercial production on the effective date of the policy i.e. 01.07.2011 but had made 50% capital investment, to opt for being governed either under the Industrial Incentive Policy, 2006' or under the 'Industrial Incentive Policy, 2011'.

Considering that it is not the stand of the State in its Industries department that any of these petitioners had opted to remain under the 'Industrial Policy, 2006' rather their proposal was submitted for grant of benefits/incentive under the 'Industrial



Policy, 2011', the orders of rejection issued in reference of a resolution dated 16.01.2006 under the old policy impugned in the writ petitions, is illegal. In fact the reliance by the Industries department to the notification issued under the 'Industrial Policy, 2006' to deny the benefits admissible to these petitioners under the 'Industrial Policy, 2011' is a malafide act and de-hors the object for which the Industrial Policy was framed.

Mr. Mauli, has made reference to the 'Act of 2006' to explain the term 'Competent Authority' to mean any department or agency of the Government, a Gram Panchayat or a Municipality or any other local body and which definition has a overriding effect as per section 23 thereof but even going by the stipulation present in the 'Industrial Policy, 2011' itself which is a self contained policy more particularly Clause 14 thereof there is absolutely no confusion that the concerned department would be the Industries department and the Competent Authority would be the Principal Secretary, Industries, chairing the committee in respect of large scale industries and the Director, Industries, as the head of the committee, to consider the proposal of the small and medium industries.

The various orders/resolutions issued under the signature of the Principal Secretary, Industries department in view of the



stipulation present in Clause 14 by itself confirms the intent of the Government in its Industries department to give effective implementation to the policy and the bogie raised by the Director to put a spanner to the resolution dated 16.01.2006 is contrary to the scheme.

Although learned counsel for the petitioners have relied upon a series of judgments to establish the cause of the petitioner and to criticize the act of the Government in retracting from its promise as present in the 'Industrial Policy, 2011' but the opinion of the Supreme Court present at paragraph 7 in the judgment of **Suprabhat Steel Ltd.** (supra) succinctly explains the legal position in this regard and I am persuaded to reproduce the relevant extract thereof for ready reference:

“7. Coming to the second question, namely, the issuance of notification by the State Government in exercise of power under Section 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefit which is otherwise available to industrial unit under the incentive policy itself. The industrial incentive policy is issued by the State Government after such policy is approved by the Cabinet itself. The issuance of the notification under Section 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives in the policy decisions taken in the industrial policy itself. In this view of the



matter, any notification issued by the government order in exercise of power under Section 7 of the Bihar Finance Act, if is found to be repugnant to the industrial policy declared in a government resolution, then the said notification must be held to be bad to that extent.”

In view of the legal position so settled by the Supreme Court, the orders passed by the Director, Industries impugned in the respective writ petitions are rendered whimsical, lacking application of mind and bereft of reasons. It is rather unfortunate that even when the respondents do not adversely comment on the eligibility of the petitioners to draw incentive under the ‘Industrial Policy, 2011’, it is simply by raising a bogie of lack of approval by the Competent Authority that they seek to deprive the benefits to these petitioners even when there is no contest on the approval granted by the State Investment Promotion Board in terms of Clause 14 of the ‘Industrial Policy, 2011’ to these petitioners.

It is not the case of the State Government that the proposals of these petitioners have been rejected by an authority competent to do so under the ‘Industrial Policy, 2011’ rather it is admitting to the eligibility that 2 of the 3 petitioners have drawn the advantage under the ‘Industrial Policy, 2011’ and there is again a difference in opinion for stoppage of these incentives in between the department of Industries and the Commercial Tax department for while the Industries department attributes the stoppage of the



benefits to the lack of approval by the Competent Authority, the Commercial Taxes department attributes it to a change in the procedure for releasing the benefits. In other words, the two departments are not united on their reasons for stoppage of the benefits midway through the 'Industrial Policy, 2011' which by itself is demonstrative of the absolute lack in foundation for the impugned act.

The Judgment of **Suprabhat Steel Ltd.** (supra) which originated from this Court reprimanded the State Government in retracting from its promise under the Industrial Policy, 1993, is an indication that in between this gap of 16 years nothing has changed in the State of Bihar in its Industries and Commercial Taxes departments rather the State Government after making loud announcement on industrial policy inviting investments, have returned to their old habit of raising frivolous objections to deny the benefits to the industrial units for reasons which has neither any foundation nor a valid explanation.

In so far as the reasons assigned by the Commercial Taxes department to deny the incentives to the petitioners is concerned, i.e. the procedure of payment of the subsidies as present in the Bihar Industrial Investment Promotion Policy, 2016 and the promulgation of the Bihar Investment Promotion Act,



2016, in my opinion such objection is only taken to be rejected because it is the procedure present in the 'Industrial Policy, 2011' which would be regulating the claims of the petitioners on its payment of subsidy and other benefits admissible thereunder and any announcement of a new policy or a procedure provided therein cannot alter the system present in 'Industrial Policy, 2011' and the Commercial Taxes department would have to abide by the system present thereunder or take effective steps to resolve this issue.

The exhaustive discussions that I have made above would lead to the following irresistible conclusions:

(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 thereupon, 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.

(Jyoti Saran, J)

I agree
Arvind Srivastave, J.

(Arvind Srivastava, J)

skpathak/-

AFR/NAFR	AFR
CAV DATE	07.03.2019
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