

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24806 of 2019

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M/s Rural Development and Marketing (P) Ltd., Plot No. 14(P), Large Industrial Estate, Barari, District Bhagalpur and being represented through its Director Dev Kumar Dubey, S/o Sri Diwakar Chandra Dubey, aged about 45 years, Gender Male, resident of New Bank Colony, At Adampur, P.S. and P.O. Adampur, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna.
3. The Executive Director, Regional Office, Bihar Industrial Area Development Authority, Barari Bhagalpur.
4. The Development Officer, Regional Office, Bihar Industrial Area Development Authority, Barari Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Shekhar, Advocate
For the Respondent/s	:	Mr. Kinker Kumar (SC9)
For the State	:	Mr. P. Pratap, Advocate
For the BIADA	:	Mr. Lalit Kishore, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 12-12-2019

The petitioner, which is an industrial undertaking, has approached this Court against a communication made to it by the Development Officer, Bihar Industrial Area Development Authority (hereinafter referred to in short as 'BIADA') directing him to pay the requisite fee for changing the constitution of the Board of Directors by 66.66%.



The only plea of the petitioner is that earlier a demand of Rs. 12,049/- was put up by BIADA towards the aforesaid fee which was paid and now again, without any reason, the transfer fee is being exacted from the petitioner.

It appears from the records that way back in the year 2014, the petitioner was asked for certain documents and the amount towards some other expenses/fee to the tune of Rs. 12,049/- which was paid by the petitioner. The aforesaid amount was definitely not towards the fee for change in the constitution of the Board of Directors. In fact, no change in the Board of Directors was made on or before 22.10.2014.

With the induction of a new partner and change in the share capital held by the partners, the company was informed about the requirement of paying such transfer fee to the tune of Rs. 8,66,300/-. The aforesaid communication was made to the company/petitioner on 11.06.2015. This was objected by the petitioner by a detailed representation, which was considered and it was



found that there was no way in which the transfer fee could have been waived.

It appears from the records that the petitioner/company was allotted an area of 5000 Sqft. of land in the industrial area, Barari at Bhagalpur in the year 2012. At the time of the allotment of the land, there were three share holders, holding 33.3% shares each. In the year 2014, two of the share holders resigned and there arose the necessity of inducting a new share holder. The new share holder was allowed to hold 25% of the share whereas 75% of the share was held by one of the share holders who remained in the company after the resignation of two of the earlier share holders. This change was approved by the authority with the caveat of payment of the transfer charges of Rs. 8,66,300/- as there had been a reconstitution of the share holders. This requirement was in tune with Clause-C of the office order contained in Memo No. 5640 dated 03.08.2013. The request of the petitioner for waiving of such requirement was also rejected. A further attempt was made by the petitioner to



avoid payment of the transfer fee by changing the share capital of the existing share holders and inducting two of the earlier share holders, who had resigned from the company. With the new change in the share holders and the change in the share capital which was stated to be held by each of them, it was projected that the transfer of the shares was only to the extent of 49% and therefore the Clause regarding the transfer fee would not be applicable. This attempt of the petitioner also was not found to be genuine in as much as a Search Committee was asked to submit a report. The Search Committee report clearly established that the change in the share capital of each of the share holders was not in conformity with the position of share holders which was available in the records of the authority. There had been a stark change from the time of approval in as much as one Mr. Dev Kumar Dubey was holding 75% of the share holding whereas the newly inducted share holder Ms. Anushmita Dubey was having 25% share holding. This accounted for 66.66% of the share holding transfer which would have otherwise



necessitated the invocation of the Clause of payment of transfer fee in accordance with the rules of the BIADA. Only in the expectation of the petitioner paying the transfer fee that an approval was given for such change in the number of share holders and the share holding percentage of the partners.

In that event, a further communication was made to the petitioner to deposit the transfer fee or else stern action in the shape of cancellation of the allotment would be contemplated.

The aforesaid communication dated 14.10.2019 has been challenged before this Court.

However, what this Court finds is that with the change in the constitution and re-induction of two of the share holders who had earlier resigned, it was required by the BIADA to further assess afresh whether the transfer of shares was to the extent of 66.66%.

This does not appear to have been done in the present instance.



In that view of the matter, this Court directs and provides that in case a representation is made by the petitioner afresh before the BIADA that assuming but not admitting that transfer fee is exactable in case of change in the constitution of the shareholding but with the new change, the percentage of change is not to such an extent which would require the invocation of the clause imposing the transfer fee.

On such representation being made within a period of two weeks, the concerned respondent/BiADA shall go through such representation and shall pass a reasoned order within a further period of four weeks, which order shall be communicated to the petitioner forthwith.

While representing before the BIADA, it would also be open for the petitioner to question the very correctness of charging fee for change in the constitution of the share holders as it might put an impediment on the company for its smooth functioning and its continuance. The purpose of allotting land at concessional rate to the



industrial undertaking is only to advance the cause of industrialization and any clause in any agreement which would hamper or disturb the aforesaid rationale and purpose of allotment of land in industrial units may not be permissible. These issues, if raised by the petitioner in the representation shall also be decided by the BIADA and a reasoned order as stated above shall be passed which shall be communicated to the petitioner.

With the aforesaid direction/observation, the writ petition stands disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.12.2019
Transmission Date	

