

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.257 of 2019
In
Civil Writ Jurisdiction Case No.1057 of 2019

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Sarvashree Anand Engineering, Industrial Growth Centre Maranga, Purnea through its proprietor Poonam Kumari, aged about 55 years, Female, Wife of Sushil Kumar, Resident of Mohalla- Ambedkar Colony, Maranga, N.H. 31, District- Purnea.

... .. Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Patna.
2. The Managing Director, Bihar Industrial Area Development Authority, Udhyog Bhawan, East Gandhi Maidan, Patna- 4.
3. The Secretary, Bihar Industrial Area Development Authority, Udhyog Bhawan, East Gandhi Maidan, Patna-4.
4. The Executive Director, Bihar Industrial Area Development Authority, Regional Office, Large Industrial Area, Barari, Bhagalpur.
5. The Area Incharge, Industrial Growth Centre, Maranga, Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Singh, Advocate
For the Respondent/s : Mr. Yogendra Prasad Sinha, A.A.G. 7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

5 04-03-2020 In terms of the present appeal, the appellant has laid challenge to the order/judgement dated 15.01.2019, passed in C.W.J.C. No. 1057 of 2019 (titled as Sarvashree Anand Engineering Industrial Growth Centre Vs. The State of Bihar) by learned Single Judge, by which the writ application has been disposed of in the same terms and conditions as noted in the order dated 15.01.2019 passed in C.W.J.C. No. 1029 of 2019 (titled as Sarvashree Aditya Enterprises Growth Centre Vs. The



State of Bihar). The operative portion of the order reads as under:

“Having heard learned counsel for the petitioner and learned counsel representing the 'BIADA' and the stand lastly taken by the parties, this Court would dispose off this writ application with the following observations and directions:

(I) The petitioner shall deposit the entire dues of the BIADA with interest as on the date of the passing of the appellate order, within a period of three weeks from today.

(II) The petitioner shall also submit an irrevocable bank guarantee of Rs. 1 Lakh in favour of 'BIADA' with an affidavit duly sworn by the proprietor of the firm that he would start commercial production in the unit within a period of three months from the date of issuance of the allotment restoration order by 'BIADA'. It is expected that the 'BIADA' would, on compliance of aforesaid conditions by the petitioner, issue necessary order within a period of one week.

(III) On the petitioner satisfying the aforesaid conditions, BIADA will not insist for deposit of penalty amount of Rs. 30,000/- and the said condition imposed by the Chairman, BIADA would be taken to have been set aside. In case the petitioner fails to abide by the aforesaid conditions, the 'BIADA' would be fully entitled and free to proceed against the petitioner and the unit concerned for realization of the outstanding dues and taking over possession of the industrial plot immediately after expiry of three weeks as mentioned above. Similarly, if the petitioner fails to bring the unit in commercial production within the undertaken period of three months, the 'BIADA' would be entitled to take over possession of the industrial plot and in such



circumstance the petitioner have no grievance.

The order of the appellate authority would be deemed to have been modified to the extent indicated above.”

The appellant lays challenge only to Clause 2 of the directions reproduced supra, wherein he stands directed to submit an irrevocable bank guarantee of Rs. 1 Lakh to Bihar Industrial Area Development Authority. Noticeably, the respondent Bihar Industrial Area Development Authority has not preferred any appeal.

During the course of the hearing, the appellant was asked to file an affidavit indicating its intent of commencing commercial production of the unit, for which purpose the plot in question was allotted to the appellant by Bihar Industrial Area Development Authority.

The appellant has filed her affidavit dated 04.03.2020, which reads as under:

“I, Sarvshree Anand Engineering Industrial Growth Centre, Maranga, Purnea through its Proprietor Punam Devi, Aged about 55 years, Wife of Sushil Kumar, Resident of Mohalla – Ambedkar Colony, Maranga, N.H. 31, District – Purnea, do hereby solemnly affirm and state as follows:

1. That I am sole appellant in this Appeal and as such am well acquainted with the facts and circumstances of the case.

2. That it is humbly submitted here that the instant appeal was heard on 02.03.2020 and after hearing



the parties, the Hon'ble Court was pleased to adjourn the appeal to 04.03.2020 and hence this Supplementary Affidavit.

3. That it is humbly submitted here that the appellant undertake before this Hon'ble Court within 2 months Unit will be functional and start it's commercial production of RCC Pipe, Pillar and Ventilator, failing which cancellation order of allotted land will be revive.

4. That the contents of this Supplementary Affidavit have been read over and explained to me in Hindi which I have fully understood the same and statements made therein are true to my knowledge and belief.”

As such, taking a holistic view, we feel that the imposition of condition of furnishing of bank guarantee can be modified with the acceptance of the undertaking furnished by the writ petitioner/appellant.

The impugned order dated 15.01.2019, passed in C.W.J.C. No. 1057 of 2019, shall stand modified accordingly. However, we clarify that if the commercial production of the unit is not commenced positively within two months from today i.e. on or before 04.05.2020, the allotment made in favour of the writ petitioner/appellant would be deemed to have been cancelled, as is mutually agreed upon by the parties. It would be open for Bihar Industrial Area Development Authority to enter into the property and take over the possession along with the super structure plant and machinery which property shall be that



of the Bihar Industrial Area Development Authority. We are
passing this order on the aforesaid mutually agreeable terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

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