

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4051 of 2021

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M/s Leoline Foods Private Limited A company registered under Company Act, 1956, having its registered office at Durga Apartment, Mirchai Gali, Patna City, Patna, through its Director/Authorized Signatory, Mr. Ashutosh Agrawal, Male, aged about 38 years, Son of Shri Vinod Prasad Agrawal resident of Shri Durga Sattu Chura Udyog, Didarganj, P.S.- Didarganj, Patna City, Patna- 803202.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary Department of Industries, Government of Bihar, Vikas Bhawan, Bailey Road, Patna, 800001.
2. The Director, Department of Industries, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Director (Technical) Development, Department of Industries, Government of Bihar, Patna.
4. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The General Manager, District Industry Centre, Patna, Bihar.

... .. Respondents

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with
Civil Writ Jurisdiction Case No. 6032 of 2020

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M/s Leoline Foods Private Limited A Company registered under Company Act. 1956, having its registered Office at Durga Apartment, Mirchai Gali, Patna City, Patna, thorough its Director/Authorized Signatory, Mr. Ashutosh Agrawal, Male, aged about-38 Years, Son of Shri Vinod Prasad Agrawal resident of Shri Durga Sattu Chura Udyog, Didarganj, P.S.-Didarganj, Patna City, Patna-803202.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Industries Department, Government of Bihar, Patna.
3. The Director Industries, Department of Industries, Government of Bihar, Patna.
4. The Directorate of Food Processing, Department of Industries, Government of Bihar,
5. The Director (Technical) Development, Department of Industries, Government of Bihar, Patna.

... .. Respondents

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Appearance :

(In Civil Writ Jurisdiction Case No. 4051 of 2021)

For the Petitioner : Mr. Mrigank Mauli, Sr. Advocate
Mr. Sanjay Kumar, Advocate



For the State : Mr. Suresh Kumar, AC to GP-1
For the S.B.P.D.C.L.: Mr. Kunal Tiwari, Advocate
(In Civil Writ Jurisdiction Case No. 6032 of 2020)
For the Petitioner : Mr Mrigank Mauli, Senior Advocate
Mr Sanjay Kumar, Advocate
For the State : Mr Kinkar Kumar, SC-9
Ms. Deepika Sharma, AC to SC-9
For the S.B.P.D.C.L.: Mr Kunal Tiwari, Advocate

C.O.R.A.M.: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 10-08-2022

Both these applications have been filed by the same petitioner. Following is the relief sought in C.W.J.C. No. 6032 of 2020: -

"a) For issuance of order/orders, direction/directions or writ/writs in the nature of Mandamus for direction upon the respondent authorities to grant the benefits of Capital Subsidy to the petitioner company being 35% of the Capital invested on the plant and machinery- in terms of the Industrial Incentive Policy-2011 (hereinafter referred to as IIP-2011) and in terms of Integrated Food Processing Scheme contained in Memo No. 951 dated 22.09.2014 - as the Detailed Project Report of the petitioner company has been approved by the State Investment Promotion Board (hereinafter referred to as S.I.P.B.) in meeting dated 29.01.2015 and also been



approved by the Project Approval and Monitoring Committee (hereinafter referred to as P.A.M.C.) in its meeting dated 14.03.2016.

b) For issuance of order/orders, direction/directions or writ/writs in the nature of Mandamus directing the Respondent authorities to grant the benefit of the incentive of subsidy for purchase of Diesel Generating Sets (hereinafter referred to as D.G. Sets) to the petitioner company in terms of Clause 2(v) of the Industrial Incentive Policy-2011.

c) For issuance of order/orders, direction/directions or writ/writs in the nature of Mandamus directing the Respondent Authorities to grant the benefit of Interest Subvention @ 2% of the rate of interest payable by the Industrial Units on the term loan from Banks/Financial Institutions to the petitioner company for a period of 7 years in terms of Clause 4 (vi) of the Industrial Incentive Policy - 2011 -as revised and incorporated by Clause 8 of the Industrial Incentive (Amendment) Policy, Bihar, 2014 (hereinafter referred to as the 'Revised Policy').

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

2. Relief sought in C.W.J.C. No. 4051 of 2021 are as

under: -



"(i) For issuance of writ in nature of Mandamus directing the Respondent Authorities to grant remission from the Monthly Minimum Charges/ Minimum Base Energy Charge/ Demand/ Billing Demand - for five years from the date of the commercial production i.e. 23.03.2017- to the petitioner company in view of the Clause-2 (vi) of the Industrial Incentive Policy-2011 (hereinafter referred to as the 'IIP2011') and in terms of the order dated 27.11.2017 passed in Radha Flour Mill (P) Ltd. versus The State of Bihar reported in 2018 (2) PLJR 558.

(ii) For issuance of writ in nature of Mandamus for directing the respondent authorities to admit and extend the benefits of the remission of the Electricity Duty (E.D.) incentive of 100% remission on electricity duty for seven years to the petitioner company from the date of commercial production for which petitioner company was entitled for in terms of the Clause 3 (ii) of IIP-2011.

(iii) For issuance of writ in the nature of Mandamus directing the respondent authorities to grant and reimburse the incentive of Stamp Duty/Registration Fees in terms of Clause - 1 of the Industrial Incentive Policy-2011 and in terms of the approval granted by the authorities contained in Memo No. 2516 dated 22.07.2011 - to the Petitioner Company -



as the inordinate delay in reimbursement of Stamp Duty/Registration Fees, to the Petitioner Company even after making the entire investment as well as grant of approval of State Investment Promotion Board [for brevity "S.I.P.B."], Bihar, Patna is unjust, illegal and arbitrary.

(iv) Any other relief or reliefs which the petitioners may be found entitled to in the facts and circumstances of the case."

I.A. No. 1 of 2021 has been filed in C.W.J.C. No. 6032 of 2020 seeking amendment in the writ application for seeking additional relief of admitting the petitioner-Company to the benefit of reimbursement of the admissible Value Added Tax/ Central Sales Tax/ Industry Tax (VAT/CST/ET) in terms of Clause 3(i) of the Bihar Industrial Incentive Policy, 2011.

Considering the circumstance that the petitioner's claim for grant of incentive/ subsidy is based on Industrial Incentive Policy, 2011 and the petitioner's case is dependent upon the determination of the central issue as to whether industrial incentive policy 2011 shall be applicable in its case or not, I.A. No. 1 of 2021 is allowed.

There is another Interlocutory Application registered as I.A. No. 2 of 2021 in C.W.J.C. No. 6032 of 2020 seeking quashing



of Annexures No. R-2/3/4/5-F of the supplementary counter affidavit filed on behalf of the respondent-State of Bihar, which contains the list of 65 units to be benefited under the Bihar Industrial Incentive Policy, 2011. Following reliefs are being sought by way of amendment through I.A. No. 2 of 2021 :-

"(i) For issuance of the writ in nature of Certiorari quashing the list of the industrial units defined as to be benefited units by the Respondents as contained in supplementary counter affidavit as Annexure-R-2/3/4/5 to the extent, as it does not contained the name of the petitioner unit as one of the units for grant of the benefits despite of the fact that the petitioner fulfilled all the requisite criteria.

(ii) For issuance of a writ in the nature of Mandamus directing the Respondents Authorities to incorporate the name of the petitioner in the list appended along with the Annexure-R-2/3/4/5 of the supplementary counter affidavit containing the names of the industrial units which has been selected as to be benefitted and the name of the petitioner unit has not been incorporated in the aforesaid list."

Considering the nature of relief, in the background of the dispute in the present proceeding, I.A. No. 2 of 2021 is allowed. The averments made in I.A. No. 2 of 2021 have been



treated to be part of the pleadings on behalf of the petitioner in the writ petition.

3. The petitioner is a private limited company incorporated under the Indian Companies Act, 1956, which has established its food processing unit for manufacturing vermicelli and pasta at Chotka Nawada in the district of Patna. As both the cases are concerning the said industrial unit of the petitioner with reference to the Industrial Incentive Policy, 2011 of the State Government of Bihar and the facts asserted in these two applications are overlapping; they have been listed together as requested on behalf of the State of Bihar in its counter affidavit filed in C.W.J.C. No. 4051 of 2021, under the orders of Hon'ble the Chief Justice. Both the cases have been heard together and in view of commonality of the facts and the legal issues involved in both the cases; they are being disposed of by the present common judgment and order.

4. We have heard Mr Mrigank Mauli, learned Senior Counsel for the petitioner and Mr Kinkar Kumar, learned S.C.-9 for the State of Bihar. Mr Kunal Tiwari, learned counsel, has appeared on behalf of the South Bihar Power Distribution Company Limited in C.W.J.C. No. 4051 of 2021.



5. In order to appreciate the issues involved in the present writ application, certain essential relevant facts deserve to be taken note of first. A food processing scheme was prepared by the State Government of Bihar to create opportunities for the food processing industries in the State of Bihar, which was formalized by Memo No. 6629 dated 31.10.2008, under which a procedure was laid down for the grant of subsidy to the individual investors establishing food processing units. The said food processing policy provided a subsidy of 35% on the amount of capital investment in the project cost. A Project Management Agency (P.M.A.) was appointed for due implementation of the scheme from the stage of conceptualization to commissioning and was responsible for the identification of entrepreneurs, assisting them in the selection of suitable projects according to their strength, viability etc. It required, *inter alia*, that the investors had to move an application before the State Investment Promotion Board (S.I.P.B.) for availing benefits of the scheme. The State Government made provision for the grant of additional benefits, apart from those provided under the Policy or the revised Policy, except capital subsidy. Subsequently, the State Government of Bihar formulated the Industrial Incentive Policy, 2011, for the accelerated industrial development of the State and to encourage the entrepreneurs for



setting up plants for food processing sectors. The Policy made provisions for various incentives at various stages of the establishment of the industrial units, namely, pre-production and post-production phases. The food processing sector being a thrust area in terms of sub-clause (ix) of the strategy of the Policy. The benefit of incentives/reliefs/subsidy under the Industrial Policy, 2011 were made available to only such industrial units which commenced their production within five years of coming into force of the said Policy, i.e., within five years from 01.07.2011. Pursuant to coming into force of the Industrial Incentive Policy, 2011, the State Government modified the Food Processing Scheme in the year 2014, which was earlier formalized in 2008, as has been noted above, vide memo No. 951 dated 22.09.2014. The modified food processing scheme required the submission of a Detailed Project Report (D.P.R.)/proposal to the S.I.P.B. The proposal was to be forwarded to the Directorate of Food Processing, and the Directorate of Food Processing was, in turn, required to get the proposal approved by the Chief Minister of the State through the Minister of Industries or the State Cabinet as the case might be.

It was provided in the modified procedure for grant of subsidy that if the proposal approved by the S.I.P.B. had been



approved by the P.M.A., the same would be sent to the Project Approval and Monitoring Committee (P.A.M.C.), which was constituted by the State Government, under the chairmanship of the Principal Secretary of the Industries Department. The P.A.M.C. was the authority designated under the modified scheme for approval of the project for grant of subsidy by the S.I.P.B. However, in case the proposal so approved by the S.I.P.B. had been prepared by the individual investor, the same was required to be apprised by the P.M.A. first before its submission to the Directorate of Food Processing for its submission to P.A.M.C. for approval of a grant of subsidy, the scheme warranted.

It is the petitioner's case that the respective industrial units had no further role to play once the proposal was submitted to S.I.P.B. or the Directorate of Food Processing or P.M.A. The P.A.M.C. was required to grant final approval on the recommendation of P.M.A. of the D.P.R. prepared/apprised by it. There were certain modifications made in the Industrial Incentive (Amendment) Policy, 2014.

It is the petitioner's case that certain additional benefits were conferred and some new benefits with modified conditions were introduced by the said Industrial Incentive (Amendment)



Policy, 2014, Clause 8 of which is relevant and is being reproduced hereunder: -

"8. The following new Sub Para-(vi) shall be added after Sub Para-(v) of "Para-4 other facilities" of Industrial Incentive Policy, Bihar, 2011:

"(vi) Subsidy of 2(two)% of interest rate to be charged on taking term loan from banks/financial institutions by the industrial units will be given (Subsidy will be payable maximum up to 7(Seven) years from the date of commercial production). Additional 5% more subsidy in the form of interest rate in addition to the determined interest rate will be payable to the entrepreneur of the Schedule Caste/Schedule Tribe/Women and Disabled category."

Apparently, with the addition of Clause 4(vi), as noted above, a benefit of grant of interest subvention @ 2% of the rate of interest payable by the industrial units on the term loan from Bank/Financial Institutions for a maximum period of seven years from the date of the commercial production was permitted.

It is the petitioner's case that acting upon the assurance of the State Government, as contained in the Industrial Incentive Police, 2011, with the amendments brought in 2014-15, the petitioner established a food processing unit for the production of



vermicelli and pasta, having capacity of 3600 MT per year of 2D and 3D pallet, 1440 MT per year of pasta and 1440 MT per year of vermicelli at Chotka Nawada, Khusrupur in the district of Patna with a total investment of 1872.64 lakhs. Enclosing all necessary documents, the petitioner made an application for seeking approval of the S.I.P.B. There is an uncontroverted specific averment made in the writ application (C.W.J.C. No. 6032 of 2020) that consent for establishment of the unit by the company was accorded by the S.I.P.B. in its meeting held on 29.01.2015 chaired by the Development Commissioner, Bihar. Subsequent to the approval accorded by the S.I.P.B., the D.P.R. was sent to P.A.M.C. for its approval on 12.08.2015. On 14.03.2016, the P.A.M.C. in its meeting chaired by the Principal Secretary, Industries Department, sanctioned the grant of subsidy to the petitioner with the condition that the ratio between the load of electric connection and that of the D.G. sets be re-verified for the purpose of assessing the capital cost of the D.G. sets. It is also the petitioner's specific case that an inspecting team constituted by the Department had inspected the petitioner's unit and prepared a report to the effect that the production of the petitioner unit had commenced with effect from 23.03.2017. The Director (Technical), Department of Industries, had issued a certificate



regarding commencement of commercial production in the petitioner's unit, which was duly communicated to the petitioner through letter No. 1780 dated 01.12.2017 (Annexure-P/15).

It is the petitioner's case that it had applied for grant of subsidy on the purchase of D.G. set by submitting the D.G. subsidy form, which was duly received in the office of the Director, Industries Department on 19.12.2017.

The State Government subsequently came up with the Bihar Industrial Incentive Policy, 2016, vide Memo No. 1822 dated 01.09.2016, in place of the earlier Industrial Incentive Policy, 2011.

It is the petitioner's case that the new Industrial Incentive Policy, 2016 contains a provision to the effect that the project, which had commenced commercial production by 31.03.2017 as per the timeline in the approved D.P.R., shall be eligible to claim subsidy under the old Policy of 2011. It is the petitioner's further case that, admittedly, commercial production in the petitioner's unit commenced on 23.03.2017 and, therefore, clause 8 of the Industrial Incentive Policy, 2016, which provides for carrying forward of 2011 Policy, applies in its case.

It has been asserted in the writ petition that the Departmental Minister through P.A.M.C. is the final authority for



projects over one crore and Principal Secretary, Department of Industries, for projects below one crore. The petitioner had its project approved by the SIPB/MAC/State Level Committee, and the P.A.M.C. routed through appropriate authority after due verification. It is the petitioner's grievance that despite having fulfilled all requisite formalities, the amount of subsidy has not been released to the petitioner and accordingly, it has been deprived of its legitimate claim under Industrial Incentive Policy, 2011. It has been asserted in the writ petition that the petitioner had made application for approval of its investment proposal much before closure of the Industrial Incentive Policy, 2011, before the S.I.P.B., which was approved on 12.08.2015. Subsequently, P.A.M.C. had also approved the said proposal on 14.03.2017. It is the petitioner's grievance that the petitioner has incurred huge financial liabilities from Banks/Financial Institutions for establishing its unit.

6. The above-noted facts have been taken from the pleadings in the writ petition bearing C.W.J.C. No. 6032 of 2020.

7. A counter affidavit has been filed on behalf of the State of Bihar, wherein it has been admitted that the S.I.P.B. had granted due approval on 29.01.2015 of the project and P.A.M.C. has recommended in favour of the petitioner on 14.03.2016. It is



the case of the State of Bihar, as pleaded in the counter affidavit, however, is that the approval so granted by the P.A.M.C. in favour of the petitioner was conditional inasmuch as the load assessment/ break-up was required to be done and the project cost was to be revised and accordingly the rate of the D.G. set was to be fixed in the D.P.R. It has been further asserted in the counter affidavit that before the petitioner's claim for grant of subsidy/incentive could be taken to its final logical conclusion, the Integrated Development of Food Processing Sector Scheme, 2008 lapsed on 30.06.2016 and thus no final approval could be accorded subsequent to conditional approval upon reassessment. It is the stand of the State of Bihar in the counter affidavit that since the food processing sector scheme itself expired on 30.06.2016 and now the new Industrial Incentive Policy of 2016 has come, the petitioner may apply under the new 2016 Industrial Incentive Policy and seek benefits. It has been stated in the counter affidavit with reference to letter No. 387 dated 26.05.2015 that the said letter prescribes procedure for grant of subsidy/incentive under Integrated Development of Food Processing Sector Scheme, 2008. It is mentioned in the said letter that the Food Processing Directorate shall take steps to seek approval of the Minister, the Ministry of Industries of the State and the Chief Minister for the grant of subsidy. However, as no



approval could be obtained by the Directorate, as stipulated in the said communication issued vide Memo No. 387 dated 26.05.2015, no benefit of subsidy can be granted now, since the Policy itself lapsed in the meanwhile on 30.06.2016.

8. It has been stated in the counter affidavit that the petitioner's claim has been closed under old Policy and the petitioner has been asked vide letter dated 09.01.2019 to apply under 2016 Industrial Incentive Policy. On the point of approval made by the S.I.P.B. and subsequent recommendation made by the P.A.M.C., it has been asserted in the counter affidavit that the said approval/recommendation was 'conditional' and never matured as a 'final' recommendation before the Policy itself expired on 30.06.2016.

9. In response to the said counter affidavit, a rejoinder affidavit has been filed on behalf of the petitioner asserting, *inter alia*, that initially, the P.A.M.C. had certain doubts in relation to the purchase of D.G. sets, whether they exceeded the requirement of the petitioner's unit and accordingly it had intended to verify if the capacity of the D.G. sets exceeded load requirements of the petitioner's unit. The P.M.A. had informed the Directorate (Food Processing), Department of Industries, about the load break-up of the plant and machinery that had been installed in the petitioner's



unit vide letter No. 411 dated 19.05.2016. It was informed to the Director, Industries, through the said letter by the P.M.A. that the assessed load was slightly over 1000 KVA and the demand of load from the electricity company was commensurate with the requirement of the unit and that the two D.G. sets installed were of the capacity 625 KVA and 125 KVA, thus less than the load requirement. Accordingly, it was informed that there was no need to revise the project cost. In response to the stand of the State of Bihar that the petitioner should claim subsidy under the 2016 Policy, it has been stated in the rejoinder affidavit that the two policies are totally different, having different scopes and amplitude; the 2016 Policy is inferior in terms of grant of subsidy/incentive inasmuch as several incentives have been curtailed severely. It has further been asserted that Industrial Incentive Policy, 2011, shall apply in the petitioner's case by virtue of Clause 8 of the Industrial Incentive Policy, 2016.

10. The State of Bihar has chosen to file a supplementary counter affidavit dated 19.01.2022, evidently dealing with the specific averments made in the rejoinder affidavit of the petitioner that the P.M.A. of the petitioner had submitted letter No. 411 dated 19.05.2016 in order to meet the conditional approval made by P.A.M.C. in its meeting held on 14.03.2016. It



has been stated that letters which were issued after two months of approval made by P.A.M.C. were not placed before the P.A.M.C. as the last meeting of the P.A.M.C. was held on 29.04.2016, much before receipt of the said letter dated 19.05.2016 on 31.05.2016. Another letter dated 27.06.2016 was admittedly received by the P.A.M.C. on 28.06.2016. This stand has apparently been taken on behalf of the State of Bihar to re-assert its contention that the conditional approval was granted by the S.I.P.B. in favour of the petitioner.

11. It is the definite stand taken in the said supplementary counter affidavit that apparently, in the absence of final approval of the P.A.M.C., the petitioner's case was not further processed under letter No. 387 dated 26.05.2016. The statement made in paragraphs 11 and 13 of the said supplementary counter affidavit are relevant and are therefore reproduced hereinbelow: -

"11. That with regard to the statement made in paragraph no. 6 & 8 of the rejoinder under reply, it is stated that clause 8 of the 2016 Policy is applicable for such units which has got approvals etc. under the old Policy of 2011/food processing sector scheme and then it came into production before 31.03.2017, however, in the present case there is no final approval from P.A.M.C. under the food processing sector scheme in favour of the petitioner as the conditional



approval did not materialize into final approval as explained hereinabove.

xxx xxx xxx

13. That with regard to the statement made in paragraph no. 9 of the rejoinder under reply, it is stated that Letter No. 609 dated 15.09.2017 was issued for such projects which have got approval of P.A.M.C. as also all the approvals of higher authorities and competent authority as per Letter No. 387 dated 26.05. 2015(Annexure-C) and those which have come into production before 31.03.2017, however, in the case of the petitioner as explained hereinabove there is no final approval of P.A.M.C. and consequentially there is no further processing under Letter No. 387 dated 26.05.2015."

12. It has been stated that a notice was published in the newspaper on 25.12.2018 to the effect that only such units were to submit their claim before 07.01.2019 with their P.M.A. who had got approval of P.A.M.C. as well as approval of the competent authority that had come into operation before 31.03.2017.

13. The gist of the contention of the State Government of Bihar is that in the absence of final recommendation and approval of P.A.M.C., after the conditional approval, the petitioner cannot be granted benefit under the Bihar Industrial Incentive Policy, 2011, which lapsed on 30.06.2016. As has been noticed in



the beginning, the petitioner has sought for quashing of the said list, which does not find the petitioner's name to be benefitted under the scheme and has sought a direction to the respondents to include its name.

14. A reply has been filed on behalf of the petitioner to the said supplementary counter affidavit asserting therein that the communication with regard to the electricity load of the petitioner has been received by the Director, Food Processing and it was due to the fault and negligence of the Director that the final approval could not be obtained. It has been reiterated that the P.M.A. in its letter dated 27.06.2016 had specifically mentioned that the power requirement of the unit was the same as mentioned in the D.P.R., i.e. 1000 KVA and the same D.G. sets of 625 KVA and 125 KVA would be installed in the unit and, therefore, the cost of D.G. sets will remain the same, i.e. 51.38 lakhs and the project cost would also remain the same.

15. A second supplementary affidavit has been filed on behalf of the petitioner bringing on record the minutes of the meeting dated 07.12.20212 and 21.03.2013 of the P.A.M.C. in order to make out a case that it was decided that the P.A.M.C. shall convene meeting every second and fourth Wednesday of the month in the Chambers of the Principal Secretary, Department of



Industries. The said statement has apparently been made to counter the stand taken on behalf of the State of Bihar that the meeting of the P.A.M.C. was held after receipt of the letter dated 19.05.2016, which has not been controverted though affidavits have been filed on behalf of the State of Bihar in this case subsequent thereto.

16. In the Court's opinion, the stand of the respondent State of Bihar has been summarized in the second supplementary counter affidavit filed on its behalf on 04.03.2022, reiterating every aspect of the matter which have been narrated in respect of pleadings on record filed on behalf of the State Respondents.

17. The facts emerging from the pleadings of C.W.J.C. No. 6032 of 2020, as narrated above, are by and large common for determining the petitioner's claim for grant of incentive under Clause 2 (vi) of the Bihar Industrial Incentive Policy, 2011. Clause 2.6 of the said Policy reads as under:-

"2(vi) Exemption from Monthly Minimum Charges/ Minimum Base Energy Charge/ Demand/ Billing Demand

The existing operational units and new units would be granted exemption from Monthly Minimum Charges/ Minimum Base Energy Charge/ Demand/ Billing Demand or such charge being levied in any other name in the tariff order of B.E.R.C. with the effective date of the new



Industrial Policy. This facility will be available for five years."

18. The petitioner's claim is being resisted by the State of Bihar on identical grounds in this case also. There are certain additional facts in relation to the petitioner's claim in C.W.J.C. No. 4051 of 2021 in which the South Bihar Power Distribution Company Limited (S.B.P.D.C.L.) is also a party-respondent.

19. A counter affidavit has been filed on behalf of S.B.P.D.C.L. wherein it has been stated dealing with the petitioner's case that a clarification was sought from the Director (Industry) regarding grant of remission under Bihar Industrial Incentive Policy, 2011, as to whether the petitioner's unit was entitled to remission under Clause 2(vi) of the said Policy as it came into commercial production after 30.06.2016 with effect from which the new Policy had come. Responding to the said letter dated 22.11.2018, the Director (Industries) had written a letter to the S.B.P.D.C.L. to stay grant of remission of AMG/ MMG/ Electricity Duty to three units, including that of the petitioner. It is accordingly the stand of the S.B.P.D.C.L. that the remission as claimed by the petitioner was not granted because of the communication of the Industries Department. When this case was taken up by this Court on 15.11.2021, the State Government of Bihar was directed to file a supplementary counter affidavit



explaining the justification for issuance of the said communication dated 22.11.2018. In compliance with the said order dated 15.11.2021, a supplementary counter affidavit has been filed on behalf of the respondent State of Bihar, making the following statement in paragraph 10: -

"10. That it was in that background that letter No. 4099 dated 22nd November, 2018 was issued by the Department of Industries keeping in abeyance the reimbursement benefits of three units including the present petitioner in view of the fact that they have come into commercial production after 30th June, 2016 as contained in Annexure' R-3/C to the counter affidavit filed on behalf of the Respondent Nos. 1 to 3."

20. It has been stated that a provision has been made under Clause 8 of the Bihar Industrial Incentive Policy, 2016 that such units which intend to seek the benefit of Bihar Industrial Incentive Policy, 2011 would have to commence commercial production by 31.03.2017 and would have to submit their option as per the said clause. It has been stated that the petitioner did not apply for an option to avail of the benefit under Bihar Industrial Incentive Policy, 2011 and, therefore, the said letter dated 22.11.2018 was issued by the Department to keep the benefit of remission to the petitioner in abeyance.



21. In the rejoinder affidavit filed on behalf of the petitioner to the supplementary counter affidavit filed on behalf of the State of Bihar, it has been stated that the Director (Industries) had published a list of units which were eligible for the benefit of remission of AMG/ MMG charges for five years and electricity duty for seven years under Bihar Industrial Incentive Policy, 2011 vide letter No. 3175 dated 12.09.2018 which contained the petitioner's name as an eligible unit and was recommended for the reimbursement. It has been further stated that the petitioner vide letter dated 06.12.2017, addressed to the Director (Industries), had requested for reimbursement of AMG/ MMG charges and electricity duty much before issuance of letter No. 3555 dated 02.11.2018 issued by the General Manager, S.B.P.D.C.L. and letter No. 4099 dated 22.11.2018 issued by the Director (Industries), Bihar.

22. There is a second supplementary affidavit filed on behalf of the petitioner in C.W.J.C. No. 4051 of 2021, which contains such facts concerning the decision of the P.A.M.C. to hold its meetings twice a week, as has been discussed while dealing with the facts of C.W.J.C. No. 6032 of 2020 and are there not being referred to again.



23. Mr Mrigank Mauli, learned Senior Counsel appearing on behalf of the petitioner in both the cases, has submitted that admittedly, the petitioner acting upon the assurance available under Bihar Industrial Incentive Policy, 2011, considering the incentives and subsidies available under the said Policy, has established the food processing unit in question upon due consent for establishment by S.I.P.B. in its meeting held on 29.01.2015, the P.A.M.C. recorded its approval on 04.03.2016 and sanctioned grant of subsidy/ incentives. It is true that the P.A.M.C. wanted re-verification regarding the petitioner's investment in the D.G. set, which was admittedly verified. Indisputably, commercial production in the petitioner's unit commenced on 23.03.2017. He has contended that Clause 8 of the Bihar Industrial Incentive Policy, 2016 clearly provides that Bihar Industrial Incentive Policy, 2011 shall govern such units which came into commercial production before 31.03.2017. He has argued that the respondents cannot deny the petitioner the benefits which accrued to it under the Bihar Industrial Incentive Policy, 2011 by the State Respondents on the basis that the State Respondents did not diligently process the petitioner's papers for the purpose of obtaining approval of Chief Minister of Bihar. He has submitted that there is no notification or circular issued by the State



Respondents that an individual unit which has not been given certain incentives under Bihar Industrial Incentive Policy, 2011 is required to apply for the same incentives under Bihar Industrial Incentive Policy, 2016. According to him, the two industrial policies are totally different and have different scopes and amplitude. It is the petitioner's case that Bihar Industrial Incentive Policy, 2016 is not a replacement for Bihar Industrial Incentive Policy, 2011 but an independent policy. Further, by virtue of Clause 8 of the 2016 Policy, continuity has been extended to the Bihar Industrial Incentive Policy, 2011.

24. Responding to the stand of the State Government in its counter affidavit that the Bihar Industrial Incentive Policy, 2011 and the Integrated Food Processing Scheme, 2008 expired on 30.06.2016, and the petitioner could apply afresh under Bihar Industrial Incentive Policy, 2016, he has argued that Clause 8 of Bihar Industrial Incentive Policy, 2016 clearly provides for carrying forward of the existing Policy and states that all units which have not commenced production as on date coming into force of Bihar Industrial Incentive Policy, 2016 shall be given a choice between Bihar Industrial Incentive Policy, 2011 and that of 2016 Policy. Such units, which hoped to be governed by the 2011 Policy, shall be governed by the said Policy provided they



commenced commercial production before 31.03.2017. He has argued that the petitioner has no role to play in processing the documents once D.P.R. had been submitted before the S.I.P.B. and it was the Director, Food Processing to send the project report for final approval, if the same was required.

25. He has submitted that exemptions permissible to the units eligible under Bihar Industrial Incentive Policy, 2011 could not be withdrawn in any circumstance by a subsequent notification of 2016. Placing reliance on the Supreme Court's decisions in the case of *Pournami Oil Mill vs The State of Kerala* reported in *1986 (Suppl.) SCC 728*, *Assistant Commissioner of Commercial Taxes(Asst.), Dharwar vs Dharmendra Trading Company* reported in *(1988) 3 SCC 570* and *M/s Pine Chemicals Ltd. vs The Assessing Authority & Ors.* reported in *(1992) 2 SCC 683*; he has argued that all established units before the subsequent Bihar Industrial Incentive Policy, 2016 are entitled to the benefits under Bihar Industrial Incentive Policy, 2011, if eligible.

26. He has submitted that the State of Bihar cannot take benefit of its own mistakes relying on the Supreme Court's decision in the case of *Kusheshwar Prasad Singh vs The State of Bihar* reported in *(2007) 11 SCC 447*. Reliance has also been placed on this point on the decisions of this Court in the case of



Santosh Kumar vs The State of Bihar reported in *2017 (1) P.L.J.R. 46* and *Binay Shankar Shukla vs. The State of Bihar* reported in *2017(4) PLJR 956*, in this regard.

27. Applying the doctrine of promissory estoppel, he has argued that it is impermissible for the State of Bihar to deny the petitioner benefits under Bihar Industrial Incentive Policy, 2011, there being no dispute that the petitioner had altered its position by establishing the unit and commencing the commercial production as stipulated under the Bihar Industrial Incentive Policy, 2011 read with Clause 8 of the Bihar Industrial Incentive Policy, 2016. Reliance has been placed in this regard on the Supreme Court's decision in the case of *Union of India vs Wood Papers* reported in *(1990) 4 SCC 256* and *Pawan Alloys & Casting Pvt. Ltd., Meerut vs U.P. State Electricity Board & Ors.* reported in *(1997) 7 SCC 251*. He has also placed reliance on this Court's decisions in the case of *M/s Suprabhat Steel Limited vs The State of Bihar and others* reported in *1995(2) PLJR 536* and *Radha Flour Mill (P) Ltd. vs The State of Bihar* reported in *2018(2) PLJR 558*.

28. He has further argued that a Division Bench of this Court in the case of *M/s Sunny Stars Hotels Private Limited vs The State of Bihar and others* reported in *2020 (2) B.L.J. 55*



covers a substantial aspect of the issues involved which had arisen out of the same Bihar Industrial Incentive Policy, 2011.

29. Mr Kinkar Kumar, learned SC-9, on the other hand, has submitted that this Court's decision in the case of *M/s Sunny Stars Hotels Pvt. Ltd.* (supra) has no application in the present set of facts for the reason that the approval granted by the P.A.M.C. in the case of the petitioner was conditional in nature and subject to verification. The verification report in respect of investment in the D.G. sets subsequently sent by the P.M.A. on 19.05.2016 was not considered by the P.A.M.C. because no meeting of the P.A.M.C. was held after 29.04.2016 and, therefore, the P.A.M.C. did not have the occasion to examine the same and accordingly the matter was not processed. He has argued that P.M.A. is not an agency of the State Government. The Department under the scheme had empanelled four such P.M.A.s for preparing detailed project reports (D.P.R.) of the project proponents. According to him, the role of the P.M.A. is only like a facilitator which complies with the details furnished by the project proponents. He has very emphatically argued that since the matter for grant of sanction could not be placed before the Chief Minister, who was the competent authority for grant of approval, it cannot be said that the approval granted in favour of the petitioner in respect of the unit in



question had attained finality. Therefore, according to him, the Division Bench decision of this Court in the case of *M/s Sunny Stars Hotels Pvt. Ltd.* (supra) has no application in the facts and circumstances of the case.

30. On the basis of rival pleadings on record and the submissions advanced on behalf of the parties, in our opinion, the following issues have emerged for determination by this Court in order to address the genuineness of the reliefs sought by the petitioner in these two writ applications which have been noted at the very outset of the present judgment and order:-

(i) Whether the petitioner's unit is covered by the Bihar Industrial Incentive Policy, 2011 read with the food processing scheme of the State Government issued vide Memo No. 6699 dated 31.10.2008 and the scheme for integrated development of the food processing sector?

(ii) Whether subsequent Bihar Industrial Incentive Policy, 2016 shall have the effect of taking away the incentives which were available for eligible units under Bihar Industrial Incentive Policy, 2011?

(iii) What is the effect of the provision under Clause 8 of Bihar Industrial Incentive Policy, 2016 concerning industrial units



which have been approved by the competent authority in the event they commenced commercial production by 31.03.2017?

(iv) Whether the Division Bench decision of this Court in the case of *M/s Sunny Stars Hotels Pvt. Ltd.* (supra), which deals with the Bihar Industrial Incentive Policy, 2011, has application in the present set of facts and if yes, to what extent?

(v) Whether it is permissible for the State of Bihar to deny the petitioner the benefits under Bihar Industrial Incentive Policy, 2011 on the plea that they failed to process the papers for obtaining the necessary approval of the Chief Minister to the Minister of Industries?

31. Since the nature of controversy involved appears to be akin to the issues involved in the case of *M/s Sunny Stars Hotels Pvt. Ltd.* (supra) in relation to the benefits/ incentives admissible under the Bihar Industrial Incentive Policy, 2011, we consider it apt to notice the conclusions recorded in the said decision, paragraph 57 of which reads thus:-

"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 C.W.J.C. No.12104 of 2018, the order dated 26.06.2018/31.10.2017 impugned at



Annexure 15 series to C.W.J.C. No.15496 of 2018 and 13.10.2017 impugned at Annexure R/1A to the counter affidavit in C.W.J.C. 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 the 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 the 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 C.W.J.C. 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 C.W.J.C. 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)."

32. It would be apt, at this stage, to reproduce Clause 8 of the Bihar Industrial Incentive Policy, 2016 in quick succession, which reads as under:-

"8. Carry forward of the existing Policy

The following are the provisions with respect to carrying forward the existing Policy.

(a) All projects which have been approved by the competent authority (as defined vide



Circular No. 128, dated 16.01.2006 of Department of Industries, Government of Bihar) but have not commenced commercial production as on the effective date of the new Policy will be given a choice between the existing Policy and the new Policy. These units shall have to apply separately with their choice or else they will be covered under the Industrial Investment Promotion Policy, 2016 by default. Those units which opt to be governed under Incentive Policy, 2011 shall continue to be governed under that Policy by the Department of Industries provided they shall commence Commercial Production/Operations by 31 March, 2017 or they shall complete the implementation and commence operations as per the timeline in the approved D.P.R. (in case the approved timeline is beyond 31 March, 2017). Units that do not commence commercial production/operations till 31 March, 2017 shall not be eligible for any incentives under the Incentive Policy, 2011, subject to all existing conditions of the Department of Industries. Such units shall have to apply afresh under the current Policy. Further, units which opt to be governed under this Policy shall apply afresh to the competent authority as may be notified by the State Government.



(b) Existing unit will continue to draw the incentive at rates and conditions of the Incentive Policy, 2011 till their limit is exhausted or on completion of the eligible period, whichever is earlier. A unit which has availed any incentive under the previous incentive policy shall not be eligible to apply under this Policy, subject to the above mentioned clause."

33. Clause 8 of Bihar Industrial Incentive Policy, 2016 clearly lays down that all projects which have been approved by the competent authority, as defined vide circular No. 128 dated 16.01.2006 of the Department of Industries, Government of Bihar but have not commenced commercial production as on the effective date of the new Policy will be given a choice between the existing Policy and the new Policy.

34. It has been conclusively held in paragraph 57(b) of this Court's decision in the case of ***M/s Sunny Stars Hotels Pvt. Ltd.***(supra) that approval granted by the S.I.P.B. accepted by the concerned Department in terms of Clause 14 of the Bihar Industrial Incentive Policy, 2011 and acted thereon, there is no requirement of further approval by any authority. Further, the Division Bench has held in the case of ***M/s Sunny Stars Hotels Pvt. Ltd.*** (supra) that approval granted by the S.I.P.B. and acted upon by the concerned Department in terms of Clause 14 for



extending incentives is a valid approval not open to interference by any other authority on any ground, except eligibility.

35. From the pleadings of the State Respondents on record, it can easily be inferred that the respondents have not raised any doubt against the petitioner in respect of its eligibility to draw incentives under the Bihar Industrial Incentive Policy, 2011.

36. Relying on a Division Bench decision of this Court in the case of **M/s Suprabhat Steel Limited** (supra), the Division Bench held in the case of **M/s Sunny Stars Hotels Pvt. Ltd.** (supra) that the petitioners of that case acting on the promise having made the investments and fulfilled the criteria for drawing the incentives, the State Respondents cannot deny such incentives, applying the principles of promissory estoppel.

37. Following the decision rendered in the case of **M/s Sunny Stars Hotels Pvt. Ltd.** (supra), we are of the view that approval having already been granted by the S.I.P.B. headed by the Principal Secretary of the Department of Industries in favour of the unit in question, the respondents cannot deny the benefits of the incentives under the Bihar Industrial Incentive Policy, 2011 to the petitioner.

38. From the stand of the State of Bihar taken in the counter affidavit/ supplementary counter affidavit filed on its



behalf and the submission made by Mr Kinkar Kumar, learned SC-9, it is evident that ;

(1) Eligibility of the petitioner of its entitlement to avail of the incentives under the Bihar Industrial Incentive Policy, 2011 has not at all been disputed.

(2) The respondents are resisting the petitioner's claim mainly on the plea that:-

(i) The approval granted to it by the P.A.M.C. was conditional, subject to verification.

(ii) While admitting the fact that the doubts raised by the P.A.M.C. were subsequently verified by the P.M.A. and communicated to it, it is the case of the State Government that as there was no meeting held of the P.A.M.C. after verification report was received, approval remained conditional and it could not attain finality.

(iii) The petitioner's case was not processed by the Department for being placed before the Departmental Minister or the Chief Minister for obtaining requisite approval for sanction of incentives.

(iv) After the formulation of the Bihar Industrial Incentive Policy, 2016, the petitioner could avail of the benefit



under the subsequent Policy instead of claiming benefit under the Bihar Industrial Incentive Policy, 2011.

39. The State Government does not dispute that the approval of P.A.M.C. was granted, and the unit commenced its commercial production before 31.03.2017.

40. From the facts noted above, it can be easily deduced that the petitioner has been able to establish its case that it altered its position on the assurance of State Government proclaimed under the Industrial Incentive Policy, 2011 read with Food Processing Policy, 2008, by establishing a food processing unit in accordance with the procedure laid down therefor. The State Government, in our opinion, cannot deny the benefits available under the Industrial Incentive Policy, 2011 on ground of the subsequent Industrial Incentive Policy, announced in 2016. The opposition made by the State Government to the petitioner's claim, in our view, is hit by the doctrine of *promissory estoppel*. The law dealing with the doctrine of *promissory estoppel* has been elaborately laid down in the case of ***Motilal Padampat Sugar Mills Co. Ltd. v. the State of U.P.***, reported in (1979) 2 SCC 409, subsequently followed in the case of ***State of Punjab v. Nestle India Ltd.***, reported in (2004) 6 SCC 465. The doctrine has been later explained in the case of



Manuelsons Hotels (P) Ltd. v. the State of Kerala, reported in
(2016) 6 SCC 766.

41. In the case of ***Manuelsons Hotels (P) Ltd.*** (supra), accepting the recommendation of the Government of India, tourism was declared as an industry by the State Government of Kerala with the issuance of a Government order. The fallout of the Government order was that it enabled those engaged in tourism promotional activities to become automatically eligible for the concessions/incentives as applicable to the industrial sector from time to time. The Government order had, however, mentioned that action would be taken to amend the Kerala Building Tax Act, 1975 and that persons eligible for such concessions would, among others, be classified hotels from 1-5 stars. The appellants before the Supreme Court had started constructing hotel-building. In pursuance of the Government order, Kerala Building Tax (Amendment) Act, 1990 was passed, which made provision for grant of certain incentives/tax exemptions, by way of notification in the gazette to be issued later. Denial of benefits of exemption/incentives pursuance to amendment in the Act resulted in the appellants of ***Manuelsons Hotels (P) Ltd.*** (supra) filing a writ petition before the High Court. It is evident from paragraph 8 of the decision in the case of ***Manuelsons Hotels (P) Ltd.*** (supra)



that the claim was rejected mainly on the ground that since no exemption notification had, in fact, been issued under the extant provision of amended Act when it was in existence in the statute book, no claim for exemption from payment of building tax could be allowed. The High Court had held that a mere promise to amend the law would not hold out a promise of exemption from payment of building tax. Discussing elaborately the doctrine of *promissory estoppel*, the Supreme Court noticed that Section 3(A) of Kerala Building Tax Act, 1990, was inserted pursuant to a promise made. A notification, which ought to have been issued under Section 3A of the Kerala Building Tax Act, 1990 was not issued at all. The Supreme Court held that non-exercise of such discretionary power is clearly vitiated on account of the application of doctrine of *promissory estoppel* in terms of this Court's judgment in the case of **Motilal Padampat Sugar Mills Co. Ltd.** (supra) and **State of Punjab v. Nestle India Ltd.**(supra). The Court held that non-exercise of such power was itself an arbitrary act, which is vitiated by non-application of mind to the relevant facts, namely, the fact that the Government order dated 11.07.1986 had specifically provided for exemption from building tax if the hotels were to be set up in the State of Kerala pursuant to the representation made in the said Government order. The



Supreme Court observed that the non-issuance of a notification under Section 3(A) of the Kerala Building Tax Act, 1975 was an arbitrary act of the Government which must be remedied by the application of the doctrine of *promissory estoppel*. The Supreme Court held in paragraph 36 as under: -

"36. In the present case, it is clear that no writ of mandamus is being issued to the executive to frame a body of rules or regulations which would be subordinate legislation in the nature of primary legislation (being general rules of conduct which would apply to those bound by them). On the facts of the present case, a discretionary power has to be exercised on facts under Section 3-A of the Kerala Building Tax Act, 1975. The non-exercise of such discretionary power is clearly vitiated on account of the application of the doctrine of promissory estoppel in terms of this Court's judgments in Motilal Padampat [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 S.C.C. (Tax) 144 : (1979) 2 SCR 641] and Nestle [State of Punjab v. Nestle India Ltd., (2004) 6 SCC 465] . This is for the reason that non-exercise of such power is itself an arbitrary act which is vitiated by non-application of mind to relevant facts, namely, the fact that a G.O. dated 11-7-1986 specifically provided for



exemption from building tax if hotels were to be set up in the State of Kerala pursuant to the representation made in the said G.O. True, no mandamus could issue to the legislature to amend the Kerala Building Tax Act, 1975, for that would necessarily involve the judiciary in transgressing into a forbidden field under the constitutional scheme of separation of powers. However, on facts, we find that Section 3-A was, in fact, enacted by the Kerala Legislature by suitably amending the Kerala Building Tax Act, 1975 on 6-11-1990 in order to give effect to the representation made by the G.O. dated 11-7-1986. We find that the said provision continued on the statute book and was deleted only with effect from 1-3-1993. This would make it clear that from 6-11-1990 to 1-3-1993, the power to grant exemption from building tax was statutorily conferred by Section 3-A on the Government. And we have seen that the Statement of Objects and Reasons for introducing Section 3-A expressly states that the said section was introduced in order to fulfil one of the promises contained in the G.O. dated 11-7-1986. We find that the appellants, having relied on the said G.O. dated 11-7-1986, had, in fact, constructed a hotel building by 1991. It is clear, therefore, that the non-issuance of a notification under Section 3-A was an arbitrary act of the Government which



must be remedied by application of the doctrine of promissory estoppel, as has been held by us hereinabove. The ministerial Act of non-issue of the notification cannot possibly stand in the way of the appellants getting relief under the said doctrine for it would be unconscionable on the part of the Government to get away without fulfilling its promise. It is also an admitted fact that no other consideration of overwhelming public interest exists in order that the Government be justified in resiling from its promise. The relief that must, therefore, be moulded on the facts of the present case is that for the period that Section 3-A was in force, no building tax is payable by the appellants. However, for the period post-1-3-1993, no statutory provision for the grant of exemption being available, it is clear that no relief can be given to the appellants as the doctrine of promissory estoppel must yield when it is found that it would be contrary to statute to grant such relief. To the extent indicated above, therefore, we are of the view that no building tax can be levied or collected from the appellants in the facts of the present case. Consequently, we allow the appeal to the extent indicated above and set aside the judgment of the High Court."



42. The petitioner's case in the present writ application is on a better footing inasmuch as the claim is being opposed on a technical ground that the approval/sanction, which was granted by the competent authority, was conditional and subject to certain verification regarding D.G. Sets, which has already been done.

43. Apparently, no laches is attributable to the petitioner for which it could be denied the benefits of the incentives under Bihar Industrial Incentive Policy, 2011. On the other hand, the State Respondents admit lack of diligence by the Department in processing the file for denying the benefits under Bihar Industrial Incentive Policy, 2011, on the ground that no meeting of the P.A.M.C. was held and no approval of the Chief Minister could be obtained in accordance with the procedure prescribed therefor. Taking a cue from the Supreme Court's decision in the case *Manuelsons Hotels (P) Ltd.* (supra) it can be safely said that such inaction or non-exercise of its functions by the State Government itself is vitiated and arbitrary.

44. Further, the State Respondents, in the Court's opinion, have attempted to take advantage of their own wrong, as has rightly been submitted on behalf of the petitioner. The Supreme Court, in the case of *M.K. Shah Engineers and Contractors vs the State of M.P.*, reported in (1999) 2 SCC 594,



though, while dealing with an arbitration agreement, has categorically laid down that no one can be permitted to take advantage of one's own wrong. Paragraph 17 of the said decision is useful and is being reproduced hereinbelow:-

"17. No one can be permitted to take advantage of one's own wrong. The respondent-State of M.P. cannot and could not have been heard to plead denial of the two appellants' right to seek reference to arbitration for non-compliance with the earlier part of clause 3.3.29. In the case of M/s Chabaldas & Sons, the clause was complied with. Alternatively, even if it was not complied with in the case of M/s Chabaldas & Sons, but certainly in the case of M/s M.K. Shaw, the fault for non-compliance lies with the respondent-State of M.P. through its officials. The plea of bar, if any, created by the earlier part of clause 3.3.29 cannot be permitted to be set up by a party which itself has been responsible for frustrating the operation thereof. It will be a travesty of justice if the appellants for the fault of the respondents are denied the right to have recourse to the remedy of arbitration. A closer scrutiny of clause 3.3.29 clearly suggests that the parties intended to enter into an arbitration agreement for deciding all the questions and



disputes arising between them through arbitration and thereby excluding the jurisdiction of ordinary civil courts. Such reference to arbitration is required to be preceded by a decision of the Superintending Engineer and a challenge to such decision within 28 days by the party feeling aggrieved therewith. The steps preceding the coming into operation of the arbitration clause though essential are capable of being waived and if one party has by its own conduct or the conduct of its officials, disabled such preceding steps being taken, it will be deemed that the procedural prerequisites were waived. The party at fault cannot be permitted to set up the bar of non-performance of prerequisite obligation so as to exclude the applicability and operation of the arbitration clause."

45. In the case of ***Kusheshwar Prasad Singh*** (supra), the Supreme Court has reiterated the principle that no party can take undue advantage of his own wrong, upon noticing a previous Supreme Court's decision in the case of ***Mrutunjay Pani vs Narmada Bala Sasmal (A.I.R. 1961 SC 1353)***, based on the legal maxim '*commodum ex injuria sua nemo habere debet* (no party can take undue advantage of his own wrong).



46. The Supreme Court further referred to the case of ***Union of India vs M/s Major General Madan Lal Yadav*** reported in (1996) 4 SCC 127 before enunciating the law in paragraph 16 in the case of **Kusheshwar Prasad Singh** (supra) as under:-

"16. It is a settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

47. In view of this settled legal principle reiterated by the Supreme Court as noted above, we are of the considered opinion that it was impermissible for the Respondent-State of Bihar to deny the original claims of the petitioner in terms of subsidies/ incentives under Bihar Industrial Incentive Policy, 2011 on the basis of pendency of the matter before it. All such grounds taken on behalf of the State of Bihar for denying the petitioner's claim are hereby rejected.

48. In any event, in our opinion, the learned Senior Counsel for the petitioner has rightly relied on the Supreme Court's decision in the case of ***Manglore Chemicals Ltd. vs Deputy***



Commissioner Commercial Taxes reported in **1992 Suppl. (1) S.C.C. 21**, wherein dealing with a notification granting cash refund on sales tax paid by new industry on raw-materials purchased by it for the first five years by the State Government of Karnataka, noted with approval the phrase "unnecessary technicality" as explained in the Statutory Interpretation (1984 edition of the Francis Bennion) which states as under:-

"Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation."

49. The Supreme Court, in its decision, in the case of **Mangalore Chemicals and Fertilisers Ltd.** (supra), has ruled in paragraph 24 that the true role of the construction of a provision as to exemption is the one stated in its decision in the case of **Union of India vs Wood Papers Ltd., reported in (1990) 4 SCC 256,**

"4. ...Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and



against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction...."

50. The approach of the State Respondents in denying the petitioner the benefit of incentive/ subsidy under Bihar Industrial Incentive Policy, 2011, in the facts and circumstances noted above, is wholly unjustified, arbitrary and hit by the doctrine of promissory estoppel.

51. Having stated thus, we revert to answer the issues formulated in paragraph 30, which are determined as under: -

(i) The petitioner's unit is covered by the Bihar Industrial Incentive Policy, 2011 read with the Food Processing Scheme of the State Government issued vide Memo No. 6699 dated 31.08.2008 and the scheme for the integrated development of the food processing sector;

(ii) and (iii) By operation of Clause 8 of the Bihar Industrial Incentive Policy, 2016, the incentives, which were available for the eligible units under the Bihar Industrial Incentive Policy cannot be taken away if such units had valid approval of the S.I.P.B. and they came in commercial production by 31.03.2017;



(iv) The Division Bench decision in the case of *M/s Sunny Stars Hotels Pvt. Ltd.* (supra) cannot be said to be inapplicable to the controversy at hand. The stand which has been taken on behalf of the State of Bihar that the approval granted by the S.I.P.B. was conditional to denying the benefits of incentives/subsidy/exemptions is untenable in the facts and circumstances, as discussed herinabove;

(v) The answer to the fifth issue framed in paragraph 28 of the writ petition is negative. The State Government cannot be permitted to derive advantage of its own folly.

52. In view of the aforesaid discussions, in our opinion, these applications deserve to be allowed with a direction to the State Respondents to allow the petitioner benefits of all the incentives under Bihar Industrial Incentive Policy, 2011. We hold that the petitioner is entitled to subsidy/ incentives under Bihar Industrial Incentive Policy, 2011. The respondents are directed to ensure that the petitioner's actual entitlements for grant of incentives/ subsidies under Bihar Industrial Incentive Policy, 2011 are considered, determined and granted to it within a maximum period of three months from the date of receipt/ production of a copy of this order.



53. These writ applications are accordingly allowed with a cost of Rs. 10,000/- each payable to the petitioner within the aforesaid period of three months.

(Chakradhari Sharan Singh, J)

Madhuresh Prasad, J.: I agree.

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	21.03.2022
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