IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10135 of 2017

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United Breweries Limited, a company registered under the provisions of the Companies Act, 1956 having its registered office at U.B. Tower, U.B. City No.24, Vittal Mallya Road, Bangalore-560001 through its General Manager, Banshidhar Verma, Son of Shri Tilakdhari Prasad, resident of A/1 Industrial Area, Kopakala, P.S. Naubatpur, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna
2. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
3. The Director of Industries, Department of Industries, Government of Bihar, Patna.
4. The Director of Industries Technical, Department of Industries, Government of Bihar, Patna.
5. The Bihar Industrial Area Development Authority, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna
6. The Principal Secretary, Department of Commercial Taxes, Bihar, Patna.
7. The Deputy Commissioner, Commercial Taxes, Patliputra Circle, Patna.
8. The South Bihar Power Distribution Company Limited, Second Floor, Vidyut Bhawan, Bailey Road, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Satyabir Bharti, Advocate
For the Respondent/s	:	Mr.Subhash Prasad Singh-Ga3

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 06-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

"(I) Issuance of a writ in the nature of mandamus directing the respondent Nos.1 to 4 to sanction and release the amount of industrial incentives/subsidy under the Bihar Industrial Incentive Policy, 2011, viz:

(I) Land /shed subsidy of Rs.30,00,000.00;

(ii) Captive Power Subsidy of Rs.95,10,972.00;

(iii) Capital subsidy of Rs.5,00,00,000,00;

(iv) Reimbursement of VAT paid of Rs.7,25,92,757,00;

> (v) Reimbursement of Electricity Duty of Rs.15,92,103,00 and
> (vi) Refund of the minimum base charges of electricity of Rs.92,10,510,00,
> Which despite having accrued and payable to the petitioner, has been withheld, without and just and reasonable cause;
> (ii) To direct the respondents to pay interest @ 18% per annum from the date the aforesaid incentives/subsidies became due and payable to the petitioner under the Bihar Industrial Incentive Policy, 2011;
> (iii) To pass such other order (orders) as your Lordship may deem fit and proper in the facts and circumstances of the present case."

Briefly stated the facts of the case is that Government of Bihar notified in the official gazette the Bihar Industrial Incentive Policy, 2011 which was made effective from 1.7.2011 and remained in force for a period of five years.

In terms of Incentive Policy, except for industry under Annexure II of the Industrial Incentive Policy 2011, other industries were entitled for incentive under the Industrial Policy. The eligible industries were entitled for pre-production and post-production incentives. The subsidy / incentive payable to an eligible industry was as under:-

> (I) Pre-production Incentives:
> (a) Stamp Duty and Registration fee-100% exemption from stamp duty / registration fee being levied on lease/sale/transfer of industrial land / shed.
> (ii) Post-production Incentives:
> (a) Incentive on land/shed – for large / medium / Mega Unit – 25% with a ceiling of Rs.30,00,000.00;
> (b) Incentive on Investment in Plant and Machinery purchased for Captive Power Generation / D.G. Set- 50% of the amount spent on plant and machinery in the establishment of captive power generation / diesel generation set;

> (c) Exemption from monthly minimum charge / minimum base energy charge / demand / billing demand – existing new units are entitled for exemption from monthly minimum charge / minimum charge / minimum base energy charge / demand/ billing demand for 5 years from the effective date of the new policy;
> (d) Capital subsidy – New large scale units will be granted 20% capital subsidy on the amount spent on plant and machinery subject to a maximum of Rs.5,00,00,000.00;
> (e) Reimbursement of VAT and Entry Tax New Industrial Units of Brewery and Distillery will be reimbursed a maximum of 25% of VAT paid for 10 years with a ceiling of 300 % of the capital invested;
> (f) 100% reimbursement of Electricity Duty for 7 years."

Petitioner in view of Industrial Incentive Policy, 2011 submitted its proposal for establishment of beer production unit of capacity of 10 lac hecto liter per year which was approved by State Investment Promotion Board on 26.5.2011 and was also approved by the State cabinet on 30.09.2013.

Petitioner was allotted industrial land of 42 acres by BIADA in industrial area, Naubatpur for establishment of Brewery for which, petitioner paid a sum of Rs.4,69,34,748/- for allotment of land and physical possession was given and lease was executed in favour of petitioner on 25.06.2015.

In terms of Industrial Incentive Policy, 2011, payment of stamp duty and registration fee was exempted by order dated 19.6.2015 passed by the Director, Technical Development, Department of Industries Bihar as a pre-production incentive under the Industrial Incentive Policy, 2011.

Petitioner invested a sum of rupees three hundred crore (Approx) for establishing the Brewery and commercial production got started on 28.3.2015 and was certified by the Director, Technical Development, Department of Industries vide its letter dated 24.7.2015, as such, petitioner comes under the definition of New Industrial Unit under the Industrial Incentive Policy, 2011 as production commenced within five years from 1.7.2011 and was entitled for post-production incentive.

Petitioner applied for grant of subsidy of Rs.95,10,972/- being 50% of the amount spent on purchase of land and machinery for captive power consumption / diesel generating set and submitted an application in accordance with notification dated 15.7.2011 issued by the Industries Department and same was forwarded by BIADA on 11.02.2015 along with its recommendation to the Industries Department, Government of Bihar.

The application of petitioner for grant of subsidy was placed before the Project Approval and Monitoring Committee headed by the Principal Secretary, Industries Department on 7.9.2016, however, same was differed.

Petitioner also applied for grant of capital subsidy of Rs.5,00,00,000/- in terms of Industrial Incentive Policy, 2011 and same was forwarded by BIADA on 11.02.2016 for recommendation for grant of capital subsidy and same was placed in the meeting of State Level Committee on 7.9.2016 but it was also differed.

Petitioner submitted an application for grant of shed subsidy of a maximum amount of Rs.30,00,000/- on 25.11.2015 and same was forwarded by BIADA with its recommendation, however, no decision was taken for grant of shed subsidy by the respondents.

Petitioner was also entitled for reimbursement of VAT under the Industrial Incentive Policy, 2011 paid on sale of goods in the State of Bihar to the extent of 25% of the VAT paid for 10 years with a ceiling of 300% of the capital invested and an eligibility certificate for grant of VAT reimbursement was issued by the BIADA on 30.12.2015.

Petitioner applied for reimbursement of VAT to the extent of 25% of VAT paid for first quarter (April 2015 to June 2015) and second quarter (July, 2015 to September, 2015) amounting to Rs.44,602,214/- and Rs.3,26,04,934/- respectively by its application dated 31.12.2015 and VAT reimbursement of Rs.44,602,214/- and Rs.3,16,19,277/- was granted to the petitioner on 2.4.2016, however, a balance of Rs.9,86,657/- was not reimbursed.

Similarly petitioner applied for reimbursement of VAT of Rs.3,27,83,982/- for the third quarter and Rs.3,88,22,118/- for the fourth quarter by its application dated 16.04.2016 and 15.06.2016, however, even after repeated reminders, the VAT reimbursement of third and the fourth quarter was not made.

Petitioner by its application dated 12.08.2016 also applied for reimbursement of electricity duty and minimum load charges in terms of the Industrial Incentive Policy 2011. A sum of Rs.92,10,510/- against minimum load charges and Rs.15,92,103/- against electricity duty is refundable to the petitioner from March 2015 to March 2017. However, no action was taken for reimbursement of electricity duty and minimum load charges already paid by the petitioner.

Petitioner by its application dated 16.03.2017, demanded reimbursement of his claim for payment of capital subsidy, subsidy for installation of captive power plant/DG set, shed subsidy and electricity duty and minimum load charges amounting to Rs.14,59,06,342/- which remains payable to the petitioner under the Industrial Incentive Policy, 2011.

Pending consideration of petitioner's claim for grant of subsidy / reimbursement of VAT, the State Government by its notification dated 24.01.2017 prohibited manufacture of beer in the State of Bihar and directed that the existing licences for running a Brewery shall not be renewed from financial year, 2017-18 resulting in closure of petitioner's unit for manufacture of beer for which petitioner cannot be faulted nor post production incentive promised under the Industrial Incentive Policy 2011 can be denied to petitioner.

Counter affidavit has been filed on behalf of Assistant Commissioner, Commercial Taxes, Patliputra Circle, Patna stating therein that procedures for reimbursement of VAT are contained in resolution dated 15.07.2011 of Industries Department. According to Clause (IX) reimbursement of VAT is permissible only to those industrial units, who are in possession of eligibility certificate from Managing Director, BIADA / General Manager, District Industry Centre and reimbursement of VAT is to be made by Drawing and Disbursing Officer of the concerned circle of Commercial Taxes Department out of the fund provided by the Industry Department to Commercial Taxes Department.

It is further stated that VAT reimbursement of Rs.4,46,02,214/- for the first quarter of the financial year 2015-16 was made to the petitioner out of the fund provided by the

Industry Department, however, for want of sufficient fund only VAT reimbursement of Rs.3,16,19,277/- as against total paid tax of Rs.3,26,05,934/- for the second quarter of financial year 2015-16 was reimbursed. VAT reimbursement of Rs.3,27,83,982/- for the third quarter and Rs.3,88,22,118/- for the fourth quarter and that of Rs.9,86,657/- for second quarter of financial year 2015-16 are pending as industries department has not provided any fund.

A counter affidavit has been filed by Deputy Director (Technical), Department of Industries in which, it has been stated that the petitioner's unit was granted approval for production of beer by the State Investment Promotion Board on 26.05.2011 and same was approved by the State Cabinet on 30.09.2013. A proposal of the petitioner's unit for considering their claim for capital subsidy was sent by BIADA by letter dated 11.2.2016 and in the meantime, BIADA vide letter dated 4.10.2016 informed that they are investigating / inquiring into the shareholding pattern of the unit and requested the industries department to put on hold the application relating to capital subsidy and in meeting held on 13.01.2017, it was brought to the notice that the shareholding pattern of the unit and assets of the company was attached by State Bank of India and there is outstanding dues of rupees 656 crores of different banks till 30.6.2016 and property of the Directors of the petitioner's company have been attached by the Enforcement Directorate.

It was further stated that in view of absolute prohibition policy of the State with respect to liquor, the unit won't be able to remain under production for five years which is mandatory requirement for post subsidy benefit as licence of the petitioner could not be renewed after 2017 and as per Industrial Incentive Policy 2011, the unit has to continue and remain in production for 5 years after receiving subsidy and if unit fails, the State Government can recover the disbursed amount with interest.

It was further stated that Shri Vijay Kumar Malya, the shareholder of the Unit having share of 8.08% and many assets of Shri Vijay Kumar Malya has been attached by the Enforcement Directorate in which petitioner's unit is also involved and, as such, State cannot disburse any subsidy amount to the defaulters and accordingly, it was decided by the State Level Committee in its meeting held on 24.07.2017 that the claim of the petitioner's unit for grant of subsidy, capital subsidy as well as DG subsidy was rejected.

Rejoinder to the counter affidavit has been filed on behalf of petitioner in which it has been stated that Vijay Kumar

Malya has ceased to be the Director of the Company w.e.f. 25.1.2017 and is not involved in the business and functioning of the company. Shri Vijay Kumar Malya was restrained by the SEBI by order dated 25.1.2017 from holding position of Director in any listed entity. Company has also filed form DIR-12 with Ministry of Corporate Affairs wherein it has been stated that Shri Malya is not associated with company w.e.f. 25.1.2017.

It was submitted that petitioner is one of the leading manufactures in the country and is a bona fide company operating throughout the country with its presence in all of the State of the country. Any reference to the shareholding pattern or attachment of the shares of one of its former directors is totally an irrelevant consideration and subsidies cannot be denied on such flimsy and nonest ground.

It has been further submitted that as per resolution of the Government in order to avail subsidy and capital subsidy, a unit has to remain in production for five years after receiving the subsidy and therefore the relevant period for five years for being in production has to be reckoned from the date on which subsidy is granted, however, in case of petitioner, on mere assumption that petitioner's unit will not remain in production for five years, the subsidy is not being granted.

Petitioner's unit has commenced production of non-alcoholic beverages in its unit after obtaining permission from the State Government and the Unit continues to be in production and even the Industry Department, Government of Bihar has certified that petitioner has commenced commercial production of soft drink from 3.10.2018.

Counter affidavit has been filed on behalf of S.B.P.D.C.L. in which it has been stated that in the light of letter no.4391 dated 25.4.2018 issued by the Director of Industries, petitioner never applied for exemption of AMG / MMG / electricity duty in the prescribed format before the competent forum. Petitioner seeks reimbursement of electricity duty of Rs.15,92,103/- and refund of minimum base charges of electricity of Rs.92,10,510/-, however, as per the existing order of the Director, Industries Bihar, the industrial units have to apply for exemption of AMG/MMG under Industrial Policy, 2011 and the industries department after examining all the documents required for exemption will recommend the exemption of AMG / MMG. Petitioner has not applied for aforesaid exemption before the Industries Department, as such, SBPDCL is not in a position to grant such benefits straightaway to any unit without the recommendation of Industries

Department, Bihar, Patna.

Heard learned counsel for the petitioner and learned counsel for the respondents.

It is an admitted fact that proposal for establishment of beer production unit was approved by State Investment Promotion Board on 26.05.2011 and, thereafter, by the State Cabinet on 13.09.2013 and in terms of pre-production incentives, payment of stamp duty and registration fee was exempted under the Industrial Incentive Policy, 2011.

Petitioner's industrial unit commenced commercial production on 28.3.2015 on which date it became entitle for post production incentive and was granted eligibility certificate by BIADA for reimbursement of VAT on 30.12.2015 and pursuant to which, petitioner was granted reimbursement of VAT of first quarter for the year 2015-16 and part reimbursement of VAT for second quarter for the year 2015-16 which acknowledges entitlement of petitioner for post production incentive and same cannot be denied to the petitioner on account of subsequent events as post production incentive had crystallized in favour of petitioner on the date of commercial production of industrial unit, i.e. 28.03.2015 in terms of Industrial Incentive Policy 2011.

Petitioner was willing to continue with the production in his industrial unit but it was the State of Bihar which prohibited production of beer on account of its prohibition policy and from 1.4.2017, petitioner had to close down its Brewery operation which is not attributable to petitioner and he cannot be made to suffer and deny benefits which has already accrued in his favour.

In terms of Industrial Incentive Policy, 2011, petitioner's industrial unit was entitled to get all the benefits which was promised to the petitioner's industrial unit by the State on establishing of a new industrial unit and same cannot be denied at subsequent stage for which petitioner is not responsible. Petitioner was willing to continue with the production in his industrial unit but it was the State of Bihar which prohibited production of beer on account of its policy of complete prohibition in the State of Bihar for which, petitioner cannot be made to suffer.

However, in spite of prohibition, petitioner's unit commenced production of non-alcholic beverages in its unit from 03.10.2018 after obtaining permission from the State Government and denial of post production incentive to the petitioner's unit on a spacious plea that on account of complete prohibition in the State of Bihar, there cannot be any industrial production for five years after grant of subsidy which is a happening subsequent to claim filed by petitioner and recommended by BIADA for grant of post incentive subsidy under the new Industrial Incentive Policy, as such, the decision dated 24.7.2017 of the State Level Committee denying post incentive subsidy contrary to Industrial Incentive Policy, 2011 is not sustainable and is accordingly set aside.

The claim is to be considered under Industrial Incentive Policy, 2011 in which, various pre and post incentives were promised by the State of Bihar to the new industrial unit for five years from the date of commencement of production and petitioner on such promise established his new industrial unit within the State of Bihar in hope to get such incentives and there was no default on his part as such, post production incentives cannot be denied to him.

Learned counsel for the petitioner has placed reliance upon a judgment dated 29.07.2019 of a Division Bench of this Court rendered in ***CWJC No.12104 of 2018, (M/s. Sunny Stars Hotels Private Limited VS. The State of Bihar & Ors.)*** since reported in 2020(2) PLJR 321 and operative paragraph of which is reproduced as under:-

" 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 disposed of with following directions to respondent no.2, the Principal Secretary, Department of Industries, Government of Bihar to reconsider the claim in terms of Industrial Incentive Policy 2011 and judgment and order ***(M/s. Sunny Stars Hotels Private Limited Vs. State of Bihar & Ors.)*** for grant of post operational subsidy to the petitioner under the Industrial Incentive Policy 2011:-

(i) Reimbursement of the VAT amount for the period 2015-16 with respect to second quarter (part payment), third and fourth quarter;
(ii) Release of captive power subsidy;
(iii) Release of capital subsidy;
(iv) Release of shed subsidy;
(v) Recommendation of application dated 12.08.2016 filed by the petitioner to the S.B.P.D.C.L. for reimbursement of electricity duty and minimum base charges of electricity;
(vi) Respondent no.2 shall give personal hearing to the petitioner and pass order within three months from the date of receipt/production of a copy of order passed by this Court.

With aforesaid observation and direction, the writ petition is allowed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.05.2022
Transmission Date	NA