IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10139 of 2018

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M/s Bihar Industries Association, an Association registered under the Indian Companies Act, 1956 having its registered office at Industry House, Sinha Library Road, Patna-800001 through its Secretary & authorised person Anil Kumar Sinha Son of Late Ramjee Prasad Srivastava, Resident of Mohalla-Mainpura, P.S.- Patliputra, District- Patna.

... ... Petitioner/s

Versus

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

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mrigank Mauli, Sr. Adv.

For the Respondent/s : Mr.Yogendra Prasad Sinha, AAG-7

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 20-09-2022

Though the present writ petition has been filed at the behest of the Bihar Industries Association, for issuance of various directions upon the Industry Department, Government of Bihar, Patna, pertaining to grant of the benefits of capital subsidy and various other incentives under the Industrial Incentive Policy, 2011 and the Food Processing Policy, 2008, notified by the Government of Bihar, however, realizing the fact that individual cases of individual industries are to be dealt with individually and no order can be passed in rem, the learned Senior Counsel for the petitioner, though seeks not to press the present writ petition but seeks a direction upon the Industries Department as also upon the State Investment Promotion Board (SIPB) and the Project Approval and Managing Committee (PAMC) to comply with the directions issued by the learned Division Bench of this Court vide judgment dated 29.07.2019, passed in the case of M/s Sunny Stars Hotel Pvt. Ltd. vs. the State of Bihar and Others (CWJC No. 12104 of 2018) and other analogous cases, as upheld by the Hon'ble Supreme Court of India vide order dated 17.01.2020 passed in SLP (C) Diary No. 43744/2019 (converted into SLP (C) No. 1878 of 2020).

2. The learned counsel for the Respondent-State

submits that since the judgment, passed by the learned Division Bench of this Court in the case of M/s Sunny Stars Hotel Pvt. Ltd. (supra), has been upheld by the Hon'ble Apex Court, it is imperative for the Respondent-State of Bihar to follow the same and the Respondent authorities would not shirk from complying with the directions issued and the law laid down therein.

3. Having regard to the aforesaid facts and circumstances of the case, I deem it fit and proper to dispose off the present writ petition with an observation that it would be incumbent upon the Respondents to adhere to the directions, issued by the learned Division Bench of this Court in the case of M/s Sunny Stars Hotel Pvt. Ltd. (supra), especially the conclusions recorded therein, which are reproduced herein below:-

> "The exhaustive discussions that I have made above would lead to the following irresistible conclusions:
>
> (a) The rejection of the case of the petitioners vide letter dated 13.10.2017 impugned at Annexure 19 to CWJC No.12104 of

2018, the order dated 26.06.2018/31.10.2017 impugned at Annexure 15 series to CWJC No.15496 of 2018 and 13.10.2017 impugned at Annexure R/1A to the counter affidavit in CWJC No.2981 of 2019 of the Director, Industries simply because the proposal does not have the approval of the Competent Authority in terms of the resolution dated 16.01.2006, is a whimsical decision, lacking application of mind and bereft of reasons.

(b) In absence of the term 'Competent Authority' defined under the 'Industrial Policy, 2011', the approval granted by the State Investment Promotion Board, accepted by the concerned/ department in terms of Clause 14 of the 'Industrial Policy, 2011' and acted thereupon, there is no requirement of further approval by any other authority.

(c) In absence of any provision present in the 'Industrial Policy, 2011', to require the eligibility proposal of any unit to be placed before the Chief Minister or the Cabinet, the explanation given by the Industries department at paragraphs 10 to 13 of the counter affidavit filed in CWJC No.12104 of 2018, to justify his illegal act, is de-hors the 'Industrial Policy, 2011'.

(d) In view of the definition of 'Competent Authority' present in the 'Act of 2006 at Annexure P/3 to CWJC No.2981 of 2019 the approval granted by the State Investment Board and acted upon by the concerned department in terms of Clause 14 for extending incentives to 2 of the 3 petitioners under the 'Industrial Policy, 2011', is a valid approval, not open to interference by any other authority on any ground, except eligibility and which is not an issue for the denial of the benefits.

(e) In absence of doubts raised against the petitioners on their eligibility to draw incentives under the 'Industrial Policy, 2011', the orders impugned in the respective writ petitions to deny them the incentives is illegal?

(f) The State having made a promise under the 'Industrial Policy, 2011' to extend the incentive benefits to the budding industrialist, that the petitioners acting on the promise have made investment and fulfilled the criteria for drawing the incentives, the respondent-State cannot deny the incentives on the principles of 'promissory estoppel' as laid down in the judgments relied upon including the one rendered in the case of M/s Suprabhat Steel Ltd. (supra).

For the reasons and discussions above and while quashing the order dated 13.10.2017 impugned at Annexure 19 to CWJC No.12104 of 2018, the order dated 26.06.2018/31.10.2017 impugned at Annexure 15 series and the order dated 13.10.2017 impugned at Annexure R/1A to the counter affidavit in CWJC No.2981 of 2019 in so far as it proceeds to reject the incentives admissible to the petitioners under the 'Industrial Policy, 2011', we hereby direct the State Government in its Industries department and the Commercial Taxes department to ensure that every incentive to which the 3 petitioners are found entitled under the 'Industrial Policy, 2011' shall be accorded to them within a maximum period of 3 months from today without either raising technicalities of approval or on the issue of change in payment procedure as raised by the Commercial Taxes department for in my opinion, the two arms of the State Government have to act within the stipulation present in 'Industrial Policy, 2011' for according benefits to these petitioners and not allow to these petitioners to either run around the corridors of the respective department or to approach this Court again specially where their admissibility to the incentives is not in question."

4. As far as the Food Processing Units are concerned, it is observed that it would be

imperative for the Respondents to comply with the directions, issued by the learned Division Bench of this Court, vide judgment dated 10.08.2022, passed in the case of M/s Leoline Foods Pvt. Ltd. vs. The State of Bihar and Others (CWJC No. 4051 of 2021), paragraph no. 51 whereof is reproduced herein below:-

> "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."

5. It is made clear that the authorities of the Respondent-State are duty-bound to obey the law

laid down by the aforesaid two judgments, rendered in the case of M/s Sunny Stars Hotel Pvt. Ltd. (supra) and M/s Leoline Foods Pvt. Ltd. (supra). In such view of the matter, it is needless to state that the State Investment Promotion Board (SIPB) and the Project Approval and Managing Committee (PAMC) shall take a final decision with regard to all the pending cases, regarding grant of incentives under the Industrial Incentive Policy, 2011, the food processing scheme, issued vide memo dated 31.08.2008 & the Industrial Incentive Policy, 2016, within a period of six months from today, in case there is no other impediment.

6. It goes without saying that the cases of those industries, which are not covered by the judgments, rendered by the learned Division of this Court in the case of M/s Sunny Stars Hotel Pvt. Ltd. (supra) and M/s Leoline Foods Pvt. Ltd. (supra), shall stand rejected and to that effect, the Respondent-State authorities shall be at liberty to pass appropriate orders.

7. The writ petition stands disposed off, with the

express consent of the parties, on the aforesaid terms.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.09.2022
Transmission Date	NA