

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12413 of 2022

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Akash Feeds Pvt. Ltd. through its Director Ajay Kumar Kushwaha, male, aged about 40 years, son of Nathuni Prasad Sinha, House No. 134, Pearl Villa, near naka no. 2, Hajipur Vaishali Business Address- Plot No.- D-6, Industrial Area, Hajipur, District- Vaishali (Hajipur).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. Principal Secretary, Department of Industries, Bihar Industrial Area Development Authority, Udyog Bhawan, Gandhi Maidan, Patna, District- Patna.
3. Chairman-cum- Managing Director, Bihar Industrial Area Development Authority, Bihar at Patna.
4. Joint Managing Director, Department of Industries, Bihar Industrial Area Development Authority, Bihar at Patna.
5. Deputy General Manager, Department of Industries, Bihar Industrial Area Development Authority, Bihar at Patna.
6. The Executive Director, Department of Industries, Bihar Industrial Area Development Authority, Hajipur, District- Vaishali (Hajipur).
7. Regional In-charge, Industrial Development, Centre, Hajipur, District- Vaishali (Hajipur).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sumeet Kumar Singh, Adv
For the State	:	Mr.Yogendra Prasad Sinha (AAG 7) Mr. Rajeev Kumar Sinha, Ac to AAG-7
For the BIADA	:	Mr. Pankaj Kumar Sinha, Adv Mr. Devesh Shankaran, Adv

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-



- I. That the present writ application is being filed in the nature of *Certiorari* for quashing the memo no.3891/D dated 19.11.2021/27.11.2021(Annexure-P/3) passed by the Executive Director based on the direction of Chairman-cum- Managing Director, BIADA by which the lease given as per BIADA Act, 1974 as amended till 1981 as per Section 6(2)(a) as amended by BIADA Rules, 2017 and other sections, the lease given to Akash Feeds Private Ltd. of land situated at No. D-6 of total area 5960 sq. ft. has been cancelled; on the ground that the petitioner has not been heard at any point of time, there is no opportunity of hearing being given to the petitioner, petitioner is ready to abide by any condition and ready to re-start the business on the concerned manufacturing unit;
- II. That the present writ application is being filed in the nature of *Mandamus* for a direction to the respondents to allow the petitioner to revive the business/ change the business as the provisions of law on the land situated at No. D-6 of total area 5960 sq. ft in Hajipur Industrial Area, District- Vaishali(Hajipur);

On **01.09.2022**, we had passed the following order:-

“Learned counsel for BIADA states that as on date no 3rd party right stands created.

As agreed, petitioner is ready and willing to furnish an undertaking to this Court to the effect that (a) within 60 days, petitioner will start commercial production in the Unit, should the respondents hand over possession of the premises to the petitioner/recall the order of cancellation, failing which petitioner shall give



vacant and peaceful possession of the premises to BIADA; (b) within six months, petitioner shall make the Unit fully operational and functional in terms of the product sanctioned and allowed to be manufactured as per the original terms of allotment; (c) petitioner shall clear all the dues payable to BIADA as on date; (d) petitioner shall make itself compliant with all the statutory requirements, including the ones protecting interest of the employees; (e) in the event of failure on the part of the petitioner to comply with the undertaking, petitioner shall hand over the vacant and peaceful possession of the premises to BIADA with liberty for further allotment to 3rd party, when petitioner shall lose all rights therein and (f) petitioner shall be liable for initiation of proceedings for contempt for having violated the undertaking furnished to the Court.

Petitioner is ready and willing to furnish such an undertaking within next one week, failing which the petition shall stand dismissed for default.

Copy of the undertaking be supplied to learned counsel for the respondents.

However, BIADA has to recall the orders passed cancelling the allotment of the premises.

Let BIADA take a call on the offer made by the petitioner.

List on 12th of September, 2022 so as to enable learned counsel for the petitioner to file an undertaking on affidavit to the aforesaid effect.

Learned counsel for the BIADA states that should the petitioner make an application for change of user, it would be considered in accordance with the industrial policy, provided the petitioner does not take any benefit in terms thereof.

We are sure that the respondent BIADA would take a decision in the affirmative, which, in our considered view, would be in public interest as also in the interest of the State to generate economic growth as also provide employment to the people.”



Petitioner has filed an undertaking being part of 1st supplementary affidavit dated 01.09.2022 in the following terms:

1st SUPPLEMENTARY AFFIDAVIT FILED ON BEHALF OF THE ABOVE NAMED PETITIONER:-

I, Ajay Kumar Kushwaha, male, aged about 40 years, son of Nathani Prasad Shaba, House no. 154, pearl villa, near naka no. 2, Hajipur Vaishali do solemnly hereby and state as follows:-

1. That I am director of the Petitioner-company in this case and as such am acquainted with the facts and circumstances of this case.
2. That it is to state and submit that the petitioner undertakes that if such opportunity is being given to revive the industry and time is given of 6 months, the petitioner will revive the entire business.
3. That it is to state and submit that the petitioner undertakes to abide by any conditions imposed by this Hon'ble Court.
4. That the petitioner also undertakes that if the unit is not revived then the petitioner will hand over the land to BIADA.
5. That it is to state and submit that the petitioner-company through its Director also undertakes that if the petitioner fails to revive the business within the six months then any action be taken against the petitioner-company including initiation of the proceedings under the Contempt of the Court Act by this Hon'ble Court.
6. That it is respectfully submitted that the petitioner-company gives unconditional apology for causing inconvenience to this Hon'ble court.
7. That it is respectfully submitted that the petitioner undertakes not to repeat such mistaken future.
8. That the contents of this supplementary affidavit have been read and explained to me in Hindi and are true to my knowledge and belief.



In view of the aforesaid, petitioner’s undertaking is accepted and taken on record.

BIADA has no objection to the order being passed, as is so being passed in similarly situated cases to augment the industrial growth within the State of Bihar.

Petitioner’s undertaking that he would revive the unit within six months and make it fully operational and functional, is accepted and taken on record.

Consequence of breach thereof stands explained through the learned counsel.

This Court would not hesitate to not only initiate proceedings of contempt for violating such an undertaking, but also direct the BIADA to take over the possession of the property for allotment to a third party in accordance with law.

Present petition stands disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

