IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19835 of 2019

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M/s CNS Hospital Private Limited A company registered under Indian Companies Act, 1956 - having its registered Office at CNS Hospital 8/1 Patliputra Industrial Estate, Patna-800013, through its Director Dr. Arika Madhav Singh, Age about 53 years, Wife of Anuj Kumar Singh, Resident of 2C, Ashiana Palace, Boring Patliputra Road, Near Alpana Market, Patalipura, Patna, Bihar-800013

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna
2. The Principal Secretary Industries Department, Govt. of Bihar, Patna
3. The Director of Industries Directorate of Industries, Bihar, Patna
4. The Director Technical Development, Bihar, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli, Sr. Adv
For the Respondent/s	:	Mr.Nagendra Prasad Yadav (SC23)

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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 the following relief(s):-

> a). For issuance of writ in the nature of Certiorari, quashing the letter dated 17/07/2017 (Annexure-P/14) issued by the Joint Secretary, Department of Health, Government of Bihar, whereby and whereunder, it has been communicated to the Director of Industries, Bihar, Patna, that Super Specialty Hospitals as in the nature of petitioner Hospital is not eligible for incentives under the "New Industrial Policy"-which is totally incorrect & illegal and reflects complete non-application of mind as the petitioner Hospital has applied under Industrial Incentive Policy-2011 and not under New Industrial Policy of 2016.
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> b) For issuance of writ in the nature of mandamus directing and commanding upon the respondent authorities to release the Capital Subsidy in terms of Clause 2(vii) of the Industrial Incentive Policy 2011 to the

petitioner Hospital.

c). For issuance of writ in the nature of mandamus, directing and commanding upon the respondent authorities to release the Subsidy for DG set in terms of Clause 2(v) of Industrial Incentive Policy, 2011 to the petitioner Hospital.

d). For issuance of a writ in the nature of mandamus directing and commanding upon the respondent authorities to grant exemption from Charge/Demand/Billing Demand & Electricity Duty in terms of (vi) of the Industrial Incentive Policy-2011 to the petitioner Hospital.

e) For holding & declaring that the inordinate delay in reimbursement of subsidy under the heading of Capital Subsidy & DG set and Exemption from payment of Monthly minimum charges/Minimum Base Energy Charge/Demand/Billing Demand & Electricity Duty in terms of Clause2(v) (vi) & (vii)respectively of Industrial Incentive Policy-2011, even after making the entire investment as well as grant approval by the State Investment Promotion Board (for short referred as "SIPB) Bihar, Patna is unjust, illegal and arbitrary.

f) For issuance of writ in the nature of mandamus directing the respondent authorities to admit the petitioner to the benefit of reimbursement of Value Added Tax (for brevity "VAT")/Central Service Tax (for brevity "CST")/Bihar Tax on Entry of Goods into local Areas for consumption, Use or sale Therein Act, 1993 (for brevity "Bihar Entry Tax Act") in terms of clause 3(i) of the Industrial Incentive Policy-2011."

Briefly stated, the facts of the case is that Government of Bihar, came up with Industrial Incentive Policy-2011, for industrial development of State and to encourage the entrepreneurs for setting up industrial Units in the State of Bihar and promised pre-production incentives and post-production incentives to industrial units whose projects were approved by State Investment Promotion Board and the competent authority / committee constituted under the policy/scheme. Under Clause-

1 pre-production incentive and Clause-2 various post-production incentives were provided. Clause-3 was with respect to incentives against tax liability and Clause-6 stated additional incentives for industries falling under the 'thrust area' as that of petitioner.

In the entire process, for grant of incentive under the policy various notifications were issued by the Industries Department for grant of different kinds of incentives for which Formats / forms were prescribed on which applications from the eligible units were to be submitted. The role of Industrial Units was confined to making an application for grant of incentives to the Managing Director, District Industries Centre, or Managing Director, BIADA and both the authorities were empowered to scrutinize the documents, carry out physical inspection and recommend for grant of subsidy/ incentive to the industrial units.

The recommendations made and the applications along with documents submitted by the Industrial Units were to be considered by a Committee constituted for said purpose and the committee shall take final decision with regard to grant of subsidy within 21 days and communicate the same to the department of Industries, which shall issue an order under the signature of Director of Industries within seven days. The incentive shall be available to only such units which have the approval of the State Investment Promotional Board (hereinafter referred to as the 'SIPB').

Petitioner is a private limited company incorporated under the Indian Companies Act, 1956 and is running Hospital in the name of CNS Hospital, Patna and in order to take benefit of Industrial Incentive Policy, petitioner Hospital decided to invest Rs. 996.77 Lacs for establishing Super Speciality Hospital and on 18.11.2013 petitioner Hospital submitted its application for SIPB approval to the Director, (Technical Development,) Department of Industries, Govt. of Bihar, enclosing all the documents.

Petitioner Hospital was informed by the Director, (Technical Department) Department of Industry, Govt. of Bihar, vide lettter dated 06.01.2014 that State Investment Promotion Board in its meeting held on 4.12.213 has given approval to the proposal for establishment of 66 bed Super Speciality Hospital at Pataliputra Industrial Area, Patna.

Super Speciality Hospitals have been included in the "thrust area" in the Clause-(ix) of the strategy of the Industrial Incentive Policy-2011, pursuant to which vide notification dated

04.03.2014, issued by Health Department, Govt. of Bihar, Cardiology, Endocrinology, Gastroenterology, Medical Oncology, Neonatology, Nephrology, Neurology, Neuro Radiology, Pulmonary Medicine, Rheumatology, Cardio Thorasic Surgery, Neurosurgery Oncology Paediatric Surgery, Plastic Surgery, Surgical Gastroenterology, Surgical Oncology and Urology have been identified as Department of Super Speciality Hospitals-which are eligible for grant of incentive as per Industrial Incentive Policy, 2011 under “Thrust Area” Industries.

Petitioner hospital has three Super Speciality Department for Neurosurgery, Neuroradiology and Pulmonary Medicine and on-call Super Specialist Cardiology, Gastroenterology, Neurology, Surgical Oncology, Nephrology, Surgical Gastroenterology and Urology are available.

Director, (Technical Development) Department of Industries, Patna, exempted petitioner-Hospital from liability of payment of Stamp Duty and registration fee in terms of pre-production incentive as envisaged under the Industrial Incentive Policy-2011.

Executive Director, BIADA, Patna, recommended the name of the petitioner-Hospital for grant of remission from

AMG/MMG/Demand/ Billing Demand for 5 years and electricity duty for 7 years from the date of commencement i.e. 02.03.2015.

Petitioner-Hospital vide letter dated 21.1.16 submitted its application for grant of capital subsidy in terms of Clause-2(vii) of the Industrial Incentive Policy-2011 along with all required documents.

Petitioner-Hospital on 21.01.2016 submitted its application for grant of subsidy for purchase and installation of Captive Power Plant/ Diesel Generating Sets in terms of Clause-2(v) of the Industrial Incentive Policy-2011.

Petitioner-Hospital vide letter dated 20.05.2016 requested for release of subsidy for Diesel Set, however, in spite of fulfilling all requirements including making entire investment and approval of SIPB, petitioner-Hospital was not released subsidy as promised under the Industrial Incentive Policy-2011.

Counter affidavit has been filed on behalf of Department of Health in which it has been stated that petitioner-Hospital is not a Super Specialty Hospital and as such is not entitled for any incentive/subsidy under the Industrial Incentive Policy-2011 and same was communicated to the petitioner by impugned letter dated 17.07.2017, which is subject matter of challenge in present writ petition.

It is stated that petitioner submitted its application dated 28.01.2016 to BIADA and same was forwarded by the Industry Department to the Health Department as the Industry Department lacs expertise in such matters and assistance was called from the Health Department for inspection of petitioner-Hospital and to submit its report and accordingly, a Five Member Committee was constituted by the Health Department which submitted its report to the Industry Department that petitioner-Hospital does not fulfill the criteria of Super Speciality Hospital.

Counter affidavit has been filed on behalf of the Nodal Department i.e. Department of Industries and para 6, 7 and 8 is being reproduced hereinbelow:-

> "6. That it is matter of records that under the Industrial Incentive Policy, 2011, under a Notification No. 155(1) dated 4 March 2014 issued by the Health Department, 18 Departments were identified under Super Speciality hospitals and they were kept in thrust area.
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> 7.That as per the aforesaid Notification dated 4 March 2014 of the Health Department, it was contemplated that for the purchase of machines and equipment used by the Super speciality hospital, benefit of subsidy shall be extended under the Industrial Incentive Policy. Apparently, in order to grant subsidy under the 2011 Industrial Incentive Policy to a super speciality hospital, firstly it is to be ascertained as to whether a particular hospital which is

claiming subsidy is a super speciality hospital or not as per the Health Department.

8. That since, it requires expertise and experts opinion on a claim of a particular hospital to be a super speciality hospital before disbursing subsidy under the Industrial Incentive Policy, upon receipt of application of this petitioner seeking subsidy to the Bihar Industrial Area Development Authority, under Letter No. 1745 dated 10th May 2016 read with Letter No. 375 dated 18 October 2016, the Health Department was requested while citing the case of the present petitioner that for which machine and for which equipment, the subsidy claim of the petitioner is to be considered, the Health Department through its expert may form an opinion and submit the response so that on the subsidy proposal of the petitioner a decision could be taken.

9.That in the meanwhile, the petitioner under Letter No. 1630 dated 4th May 2016 was also informed and asked to submit their report on certain points as mentioned therein.

10.That is in response to the queries of the Industry Department that ultimately under the impugned Letter NO. 779(1) dated 17 July 2017 that the Health Department categorically informed that the petitioner hospital does not fulfill the eligibility criteria of super speciality hospital under the Industrial Policy.

11. That, accordingly, the claim of the petitioner for grant of subsidy was not processed and closed.

12. That, in fact, under Memo No. 3152 dated 13 October 2017, a list of all such units whose cases were closed due to non-approval of the competent authority were issued and that carries the name of the petitioner's unit also at serial No. 24, but, primarily, the case of the petitioner for subsidy is to be treated as closed on the ground that the Health Department has formed an opinion that the petitioner is not a super speciality hospital fulfilling the eligibility

criteria as per the Industrial Policy."

Heard learned counsel for the petitioner as well as learned counsel for the State.

Under the Industrial Incentive Policy-2011, Super Speciality Hospitals have been included in 'Thrust Area' which are eligible and entitled for grant of incentive/subsidy under the Industrial Incentive policy 2011. Petitioner-Hospital started new Unit on the assurances made under the Industrial Incentive Policy-2011 and accordingly, petitioner-Hospital submitted its proposal to start 66 bedded super Speciality Hospital and its proposal was approved by the State Investment Promotion Board and by notification dated 04.03.2014 Health Department, Bihar, identified the areas of Super Speciality for identifying Super Speciality Hospitals and out of said identified areas petitioner-Hospital has three inhouse super speciality department.

The eligibility of a Unit for grant of incentive/subsidy has to be tested in terms of Industrial Incentive Policy-2011 and consequential notification dated 04.03.2014 issued by Department of Health, Government of Bihar.

There is no such condition that Super Speciality Hospital is to have more than one department to qualify as a

Super Speciality Hospital nor there is any minimum number of beds prescribed to qualify as Super Speciality Hospital having anyone or more department was the only criteria laid down in the notification dated 04.03.2014 issued by Health Department.

The reason assigned by the Health Department while rejecting the claim of Petitioner-Hospital that the petitioner-Hospital does not fulfill the requirement of super Speciality Hospital based on guidelines of Ministry of Health and Family Welfare, Government of India was based on totally extraneous consideration and outside the purview of the Industrial Incentive Policy-2011, formulated by the Government of Bihar, for grant of incentive/subsidy to Super Speciality Hospitals which has been considered to be 'Thrust Area' under the policy.

The guidelines of the Central Government, with respect to Super Speciality Hospital has no relation or nexus or concern with the definition of super speciality hospital under Industrial Incentive Policy-2011 and grant of subsidy/incentive is to be considered within the definitions and criteria laid down under the policy.

State never intended to import any other standard for establishment of Super Speciality Hospital and notification of Health Department dated 04.03.2014 was a self contained and complete code in itself and eligibility and entitlement has to be decided within the four corners of the scheme and notification issued by the Health Department.

The eligibility of the petitioner-Hospital was never doubted by the Industry Department as the project of the petitioner-Hospital as Super Speciality Hospital was approved by SIPB and thereafter Department of Industries approved (i) exemption from liability of payment of Stamp Duty and registration fee (ii) grant of remission from AMG/MMG/Demand/Billing Demand for 5 years and electricity duty for 7 years from the date of start of petitioner-Hospital i.e. 02.03.2015.

One of the reasons of rejection of the claim of petitioner that proposal has not been approved by the competent authority has already been decided and rejected by this Court and same has been affirmed by the Apex Court in case of **M/s Sunny Stars Hotels Private Limited Vs. State of Bihar & Ors.** with its analogous cases, as such, said reason does not survive.

The second ground of rejection that petitioner-Hospital is not a Super Speciality Hospital is also fit to be rejected as the ground for rejection is based upon irrelevant and non-existent ground and circular relied upon has no nexus with definition of Super Speciality Hospital under the Industrial Incentive Policy-2011 and moreover, once the project of petitioner for starting a Super Speciality Hospital has been approved by SIPB and Department of Industry has found petitioner-Hospital entitled for different incentives under Industrial Incentive Policy-2011 and pursuant to said assurance, petitioner-Hospital has invested a huge amount in starting the Super Specialaity Hospital for which it has taken loans from financial institutions, the State, at this stage cannot be permitted to take U-turn and deny all the incentives/subsidy to the petitioner-Hospital as promised under the Industrial Incentive Policy 2011 on irrelevant and non-est grounds.

Accordingly, the order dated 17.07.2017 issued in the name of Joint Secretary, Department of Health, Govt. of Bihar as contained in Annexure-P-14, is quashed and Principal Secretary, Department of Industry is directed to consider release of the capital subsidy, subsidy for D.G. Set, exemption from monthly minimum charges/minimum based energy charge/demand/ billing demand and electricity duty, reimbursement of VAT/CST/Entry Tax in terms of Industrial Incentive Policy-2011 treating the petitioner-Hospital to be a

Super Speciality Hospital under the Industrial Incentive Policy-2011.

The writ petition stands allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2022
Transmission Date	NA