

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4229 of 2017

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1. M/s Nandita Poultry Integrators Pvt. and Anr Son of Parma Nand Singh, Resident of Sant Kabir Nagar, Jadhua, Post and Police Station - Hajipur, District - Vaishali
 2. Shri Jay Prakash Singh, Son of Parma Nand Singh, Resident of Sant Kabir Nagar, Jadhua, Post and Police Station - Hajipur, District - Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Secretary, Department of Industries, Government of Bihar, Patna
3. The Director Industries, Department of Industries, Government of Bihar, Patna
4. The Director, Technical Development, Department of Industries, Government of Bihar, Patna
5. The Director, Food Processing Directorate, Department of Industries, Government of Bihar, Patna
6. The Deputy Director, Food Processing Directorate, Department of Industries, Government of Bihar, Pa
7. The Bihar Industrial Area Development Authority, through, Managing Director, 1st Floor, Udyog Bhava

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Adv. Mr. Shantanu Prasad, Adv. Mr. lawnish Kumar, Singh, Adv.
For the Respondent/s	:	Mr. Kinkar Kumar-Sc9
For the BIADA	:	Mr. Yashraj Bardhan, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 18-08-2023

Heard the learned counsels for the parties.

2. This writ petition has been filed for seeking the following reliefs:

“1. That the above named petitioners are filing the present writ application before this Hon'ble court for



issuance of writ of mandamus for directing/commanding the respondent authorities to extend the incentives by way of financial assistance as promised by the State Government through BIHAR INDUSTRIAL INCENTIVE POLICY 2011 followed by BIHAR INDUSTRIAL INVESTMENT POLICY 2016."

3. Learned counsel for the petitioners has stated that the petitioners basing on the policy decision taken by the Government of Bihar, namely, "Bihar Industrial Incentive Policy-2011" vide Annexure-1 has established a Unit. The necessary approval has been given by the State Investment Promotion Board (hereinafter referred to as "the S.I.P.B.") on the application made by the petitioners on 27.07.2011, but the authority concerned without taking into consideration the above has passed the impugned order.

4. Learned counsel for the petitioners has stated that the authority concerned without taking into consideration the above approval given by the S.I.P.B. has rejected the case of the petitioners on the ground that the proposals have not been approved by the concerned Chief Minister.

5. Learned counsel for the petitioners has stated that as per the new policy of the Government of Bihar the approval of Hon'ble the Chief Minister is necessary but in so far as the



petitioners' case is concerned, the same falls under the old policy of the year, 2011 for which the approval of Hon'ble the Chief Minister is not necessary and the approval of the S.I.P.B. is only sufficient and same has been given by the said authority.

6. Learned counsel for the petitioners has relied on the judgment dated 10.08.2022 of a Division Bench of this Hon'ble Court passed in C.W.J.C. No. 4051 of 2021 along with its analogous case, this Hon'ble Court while dealing with the similar matter has allowed the said writ petition and the S.L.P. filed against the said order has also been dismissed by the Hon'ble Supreme Court.

7. Learned counsel for the petitioners has taken this Court through the order passed by this Hon'ble Court in C.W.J.C. No. 4051 of 2021 along with its analogous case dated 10.08.2022 most specifically the issue that was framed by the Division Bench.

8. *Per contra*, learned counsel appearing on behalf of the respondents while trying to defend the order passed by the authority which is impugned in the present writ petition has not disputed the judgement of this Hon'ble Court passed in C.W.J.C. No. 4051 of 2021 (supra) and subsequent dismissal of the S.L.P. and also not denied the fact that the industry of the petitioners was started before the 2016 policy and stated that the petitioners have



applied for approval in the year 2011 itself and necessary approvals were also granted by the S.I.P.B.

9. Even though the learned counsel for the respondents has stated that the facts in the present case are distinguishable from the facts in the other judgments relied by the counsel for the petitioner. A perusal of the order reveal that the scheme required the approval of the SIPB and not of the PAMC.

10. On perusal of the impugned order it shows that the authority concerned has rejected the case of the petitioners solely on the ground that the 2016 policy requires the approval of Hon'ble the Chief Minister and that there was no approval of Hon'ble the Chief Minister so far as the petitioners' industry is concerned. The authority has not bothered to verify as to when the industry has been started, admittedly in the present case the S.I.P.B. approval was of the year 2011 that is much before the 2016 policy.

11. The Division Bench of this Hon'ble Court in paragraphs no. 30(v), 47, 50, 51 & 52 of the judgement dated 10.08.2022 passed in C.W.J.C. No. 4051 of 2021 (***M/s Leoline Foods Private Limited Vs. The State of Bihar & Ors.***) along with its analogous case has held as follows:-

30(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”.

(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”.

(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 3.08.2008 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.** 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 hereinabove;*

(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."

12. The above judgement of this Hon'ble Court has already been upheld by the Hon'ble Supreme Court and therefore the decision of the Division Bench of this Court is not only binding on this Court but also on the authority.



13. Having regard to the same, the writ petition is allowed setting aside the impugned order passed by the authority concerned. The petitioners are 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.

(A. Abhishek Reddy , J)

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AFR/NAFR	NAFR
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