

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1538 of 2023

1. Gangotri Holy Products Private Limited, through its Director, Vikas Chaudhary, having Registered office at 46, New Katra, Ishwar Bhawan, Khari Baoli, New Delhi, PIN- 110006.
2. Vikas Chaudhary, Son of Nand Kishor Chaudhary, Resident of 31 Gola Road, P.S.- Town, Block- Mushahari, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through, Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Director Industries, Department of Industries, Government of Bihar, Patna.
3. The Director, Directorate of Technical Development, Department of Industries, Government of Bihar, Patna.
4. The Director, Directorate of Food Processing, Department of Industries, Government of Bihar, Patna.
5. The Deputy Director, Directorate of Food Processing, Department of Industries, Government of Bihar, Patna.
6. General Manager, District Industrial Centre, Muzaffarpur.
7. Darashaw and Company Private Limited, through its Director, Baman Keki Dinshah Bamanji Mehta, having registered office at 5-6, Plot 208, Regent Chambers, Jamnalal Bajaj Marg, Nariman Point, Mumbai, PIN- 400021 (MH).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Singh, Adv.
For the Respondent/s : Mr. Kinkar Kumar, (SC-9)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 29-08-2023

Heard the learned counsel for the parties.

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

“That the abovenamed 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 grant the incentive to the petitioner company by way of financial assistance as promised by the State Government vide BIHAR INDUSTRIAL INCENTIVE POLICY 2011 under "Scheme for Integrated Development of Food Processing Sector" followed by BIHAR INDUSTRIAL PROMOTION 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: A Land of Immense Opportunities For Food Processing Industry" (**Annexure-1**) and "Bihar Industrial Incentive Police-2011" (**Annexure-2**) 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 in 2015, the authorities concerned are not taking any decision.

4. Learned counsel for the petitioners has stated that the authority concerned are not taking into consideration the approvals given by the S.I.P.B. and not passing any orders. It has come to the knowledge of the petitioner that the authorities are not passing the order 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 wherein 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 action of the authority, 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. The counsel has also not denied the fact



that the industry of the petitioners was started before the 2016 policy and that the petitioners have applied for approval in the year 2010 itself for which necessary approvals were also granted by the S.I.P.B.

9. A perusal of the impugned order shows that the authority concerned is not passing orders on the ground that the 2016 policy requires the approval of Hon'ble the Chief Minister and that there is no approval of Hon'ble the Chief Minister in so far as the petitioner's industry is concerned. The authority has not bothered to verify as to when the industry has been started by the petitioners, admittedly in the present case the S.I.P.B. approval was of the year 2015 that is much before the 2016 policy came into existence.

10. 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 while framing the following issue has held as under:-

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.

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

12. Having regard to the same, the writ petition is allowed and the authorities are directed to pass necessary order



in favour of the petitioners. The petitioners are entitled to subsidy/incentives under Bihar Industrial Incentive Policy, 2011. The respondents are directed to ensure that the petitioners’ actual entitlements for grant of incentives/subsidies under Bihar Industrial Incentive Police, 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.

The present writ petition is accordingly allowed.

(A. Abhishek Reddy , J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.09.2023
Transmission Date	NA

