

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4649 of 2023

M/s Neutral Publishing House Limited Plot No. P-23 (P), Industrial Area-Gaya through its authorized signatory Kaushal Agarwal, male, aged about 45 years, S/o Krishna Kumar Agarwal, Resident of 404, Vasundhara Regency, Nageshwar Colony, P.O. and P.S. - S.K. Puri, Boring Road, District - Patna.

... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Government of Bihar, Patna.
3. The Bihar Industrial Area Development Authority (BIADA), through the Managing Director, Udyog Bhawan, Gandhi Maidan, Patna.
4. The Managing Director, Bihar Industrial Area Development Authority (BIADA), Udyog Bhawan, Gandhi Maidan, Patna.
5. The Executive Director (Operation), Bihar Industrial Area Development Authority (BIADA), Patna.
6. The Executive Director (South), Bihar Industrial Area Development Authority (BIADA), Patna.
7. The Deputy General Manager, Bihar Industrial Area Development Authority (BIADA), Gaya Cluster.
8. The Development Officer, Bihar Industrial Area Development Authority (BIADA), Regional Office, Gaya.
9. The Area Incharge, Industrial Estate - Gaya.
10. Bihar Soya Foods Pvt. Ltd. through its Director Arvind Kumar, S/o Arjun Rao, R/o - Station Road, near petrol pump, District – Gaya. ... Respondents

Appearance :

For the Petitioner	:	Mr. Pushkar Narain Shahi, Sr. Adv. with M/s Kaushal Kr. Deesha Singh, Rajat Kashyap & Rajesh Ranjan, Advs.
For the Respondents	:	Mr. Vikash Kumar, SC XI

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

4 05-09-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the
following relief(s) :

*i. For setting aside the letter contained in Memo No.
831 dated 01.03.2023 issued by the Respondent No.
7, The Deputy General Manager, Bihar Industrial*



Area Development Authority (BIADA), Gaya Cluster whereby and wherein he has not only rejected the application dated 18.01.2023 filed by the petitioner requesting therein to transfer the allotted land but also directed to hand over the physical possession of the land to the authority, recording therein the benefit of one time opportunity to transfer the cancelled unit approved w.e.f 15.11.2022, whereas statutory appeal filed by the petitioner has been withdrawn prior to that, which is totally in teeth of the order passed in CWJC No. 686 of 2023 dated 10.02.2023, granting permission to withdraw the writ application with an opportunity to take steps to avail one time opportunity scheme for transfer of land in accordance with the policy decision of the BIADA. And, to direct the respondents to grant benefits of office order contained in Memo No. 7582 dated 15.12.2022 issued by Respondent No. 5. The Executive Director (Operation), Bihar Industrial Area Development Authority (BIADA), Patna, whereby one time opportunity is being granted to transfer the cancelled unit of the allottees to any transferee, after withdrawing the pending case either before the Appellate Authority or before Hon'ble Court.

ii. For setting aside the order dated 15.11.2022 passed by Respondent No. 2. The Principal Secretary, Department of Industries, whereby he has allowed the statutory appeal case no. 206/2022 filed by the petitioner to be withdrawn granting two months time to remove the machineries from the plot in question on payment of dues of BIADA, if any, and further for setting aside the order contained in Memo No. 115 dated 11.08.2022 passed by Respondent No. 7. The Deputy General Manager, Bihar Industrial Area Development Authority (BIADA), Gaya Cluster whereby and whereunder the allotment of Plot No. 23 (P) having an area of 10,630 square feet in Industrial Estate, Gaya made in favour of the petitioner have been cancelled and that the same is completely illegal, arbitrary in nature and sans jurisdiction being de hors to the provisions of BIADA Act, 1974.

iii. For directing the respondents to allow the duly filed transfer application of the petitioner dated 18.01.2023 in favour of private respondent no. 10



i.e. Bihari Soya Foods Processing Pvt. Ltd.. Gaya upon his due consent submitted for same before the authority, since many identical entrepreneurs have been allowed to transfer their cancelled unit to other unit/s by the Authority on their own or in compliance of the order passed by this Hon'ble Court.

iv. For any other relief or reliefs for which the petitioner be found entitled in the eye of law.

3. Learned counsel appearing on behalf of the petitioner has stated that the petitioner has applied under the Amnesty granted by the authority, dated 15.12.2022. Learned counsel has stated that one of the conditions that the said Exit Policy prescribes is that the petitioner should submit his application before 31.01.2023 and by the said date should withdraw any cases filed against BIADA. Learned counsel has stated that though the petitioner was eligible as per the said criteria prescribed under the Exit Policy, the authority concerned has rejected the application of the petitioner solely on the ground that the appeal filed by the petitioner against BIADA was withdrawn prior to the issuance of the said Exit Policy. Learned counsel has stated that the said ground on which the application of the petitioner has been rejected is contrary to the principles of law, bad, illegal, arbitrary exercise of power and the same has to be set aside. The condition prescribed in the Exit Policy is that if any cases are pending between the applicant and BIADA, the same should be withdrawn, but, that



does not necessarily mean that the cases have to be withdrawn only after the date of issuance of the said Exit Policy. Learned counsel has prayed for setting aside the above order and allow the present Writ Petition.

4. Per contra, the learned counsel appearing on behalf of the BIADA has vehemently opposed the very maintainability of the Writ Petition and stated that the petitioner was not falling in any of the categories for which the Exit Policy scheme has been extended. Learned counsel has stated that the Writ Petition filed by the petitioner was pending before this Hon'ble Court and the same was withdrawn only on 10.02.2023, i.e., after the last date mentioned in the scheme.

5. Further, it is stated by the learned counsel for the BIADA that the appeal filed by the petitioner was withdrawn and conditional order was passed based on the undertaking given by the petitioner that he will vacate the premises within two months from the date of the said order, i.e., 15.11.2022, the authority has rightly rejected the application of the petitioner. Learned counsel has stated that the present Writ Petition is bereft of any merit and is liable to be dismissed.

6. A perusal of the document shows that the allotment made to the petitioner was cancelled by the authority vide order, dated 01.03.2023, thereafter, the petitioner has preferred an appeal before the Appellate Authority and the same was



withdrawn vide order, dated 15.11.2022. Thereafter, the BIADA authorities have floated scheme whereby a one time opportunity was granted to the allottees. The petitioner has applied under the said scheme on 15.12.2022. As per the eligibility criteria mentioned in the said scheme, the petitioner had to make an application before 31.12.2022 and if any cases are pending between the applicant and BIADA, they have to be withdrawn before the application is made. Admittedly, in this case the petitioner has withdrawn the appeal filed by him on 15.11.2022, i.e., even before the scheme was announced. The only reason given in the impugned order for rejecting the application of the petitioner is that the petitioner has withdrawn the appeal before the scheme was formulated, except this reason no other reason has been given in the impugned order. The said reason is legally not valid as the scheme which has been floated by the authorities does not stipulate that the allottees have to withdraw the cases only after the date of issuance of the said scheme. If any person wants to take advantage of the scheme that has been formulated by the authorities, they are free to make an application provided they meet the eligibility criteria prescribed in the said scheme. In this case the petitioner has made the application before the last date and the appeal filed by him was also withdrawn even before the scheme was formulated, therefore, the rejection of the application by the authorities on



this ground is bad, illegal and an arbitrary exercise of power not vested with the authorities. Even though the authorities have taken stand in the counter affidavit stating that the Writ Petition filed by the petitioner was withdrawn after the last date for receipt of the application, i.e., 10.02.2023, the said reason is not taken in the rejection order. Once order is passed the authorities they cannot improve the said order subsequently by way of counter affidavit. The Hon'ble Supreme Court in the case of **Mohinder Singh Gill & Anr. Vrs. Chief Election Commissioner, New Delhi & Ors.** reported in (1978) 1 SCC 405 whereby the Hon'ble Supreme Court has held as under :

“when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji;

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

7. Having regard to the above, the impugned order is set aside and the matter is remitted back to the authorities



concerned for passing orders afresh on the application of the petitioner filed under the scheme, dated 15.12.2022.

8. It is needless to mention that before passing any orders, the party shall be put on notice and given an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of two months from the date of receipt of a copy of this order. Any order passed shall be communicated to the parties.

9. With the above directions, the Writ Petition is **allowed** to the extent indicated above.

(A. Abhishek Reddy , J)

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