IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6571 of 2023

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M/s ACE Infra and Security Pvt. Ltd., A Company registered under Companies Act having its Office at Ranjan Path, R.P.S. More, West Bailey Road, Danapur, District- Patna, through its authorized representative- Anirudh Priya, aged about 42 years (Male), Son of Ashok Kumar Gupta, Resident of Ranjan Path, Opposite R.P.S. More, Danapur, District- Patna ... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industry, Government of Bihar, Patna.
3. The State Investment Promotion Board, Vikash Bhawan, Patna through its Secretary.
4. Director, Industries, Department of Industry, Government of Bihar, Patna.
5. The Director (Technical Development), Department of Industry, Government of Bihar.
6. The General Manager, District Industries Centre, Nalanda. ... Respondents

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Appearance :
For the Petitioner : Mr.Abhishek Kumar, Adv.
For the Respondents : Mr.Vikash Kumar, SC XI

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

5 16-08-2023 Heard the learned counsel for the parties.

2. For the reasons mentioned in Interlocutory Application No. 1 of 2023, it is allowed.

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

> *i. For issuing a writ of certiorari or any other appropriate writ setting aside the email dated 05.11.2022 and the attachment therein whereby and whereunder the claim of the petitioner under the Bihar Industrial Incentive Policy 2011 has been rejected on the ground that the proposal of the petitioner was accepted by the State Investment Promotion Board after the date of commercial production of the unit.*

ii. For issuing writ of certiorari or any other appropriate writ setting aside the letter dated 23.11.2017 bearing Memo No. 3573 (to the extent it relates to the petitioner) whereby and whereunder the claim of the petitioner under the Bihar Industrial Incentive Policy 2011 had been rejected on the ground of proposal of the petitioner not having approval of the competent authority.

iii. For issuing of mandamus directing the respondents to pay the petitioner its entitlement under the head of subsidy for capital investment in plants and machinery, subsidy for in DG sets, subsidy/exemption from stamp duty/registration fees of land, reimbursement for monthly minimum charges/demand charge under the Bihar Industrial Incentive Policy, 2011.

iv. For holding that once the proposal of the investment has been accepted and petitioner is declared entitled under the Policy then the Respondents cannot interfere with the disbursal of the subsidy amount to the Petitioner.

v. For holding that the Respondents erred by not releasing subsidy amount given the fact that they hold no authority to refuse/stop/interfere, once proposal of investment has been accepted by the State Investment Promotion Board (SIPB).

vi. For holding that the Respondents cannot make the Petitioner run from pillar to post for subsidy once it is found entitled.

vii. For any reliefs, direction/directions for which the petitioner is entitled may be given.

4. Learned counsel for the petitioner has stated that the petitioner basing on the policy decision taken by the Government of Bihar, namely, "Bihar: A Land of Immense

Opportunities For Food Processing Industry" and "Bihar Industrial Incentive Policy-2011" 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 petitioner in 2013, but the authority concerned without taking into consideration the above has passed the impugned order.

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

6. Learned counsel for the petitioner 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 petitioner's 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.

7. Learned counsel for the petitioner 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 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.

8. Learned counsel for the petitioner 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 more specifically the issue that was framed by the Division Bench.

9. 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. The counsel has not denied the fact that the industry of the petitioner was started before the 2016 policy and stated that the petitioner has applied for approval in the year 2013 itself and necessary approvals were also granted by the S.I.P.B.

10. A perusal of the impugned order shows that the authority concerned has rejected the case of the petitioner 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 petitioner's 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 2013 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".*
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> ***(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".*
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> ***(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, has 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 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 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.

(A. Abhishek Reddy , J)

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