

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4993 of 2017

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1. Aashi Agrotech Pvt. Ltd. Through its Director, Vijeta Kumari, having registered Office at B-5, Bhanu Kutir, Arya Samaj Mandir Road, RPS More, District- Patna.
 2. Vijeta Kumari, aged about 33 years Wife of Shri Abhishesh Kumar Resident of Village- Patory, Post- Patori Basant, Police Station- Moro, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal secretary, Department of Industries, Government of Bihar, Patna.
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, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Lal Babu Singh, Advocate.
For the Respondent/s : Mr. Subhash Pd. Singh, GA-3.

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

4 19-09-2023 Heard the learned counsel for the parties.

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

“That the above named petitioners are filing the present writ application before this Hon’ble Court 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
Police 2016.*

3. Learned counsel for the petitioners has stated that the petitioners basing on the policy decision taken by the Government of Bihar, namely, “Integrated Development of Food Processing Sector, 2008 has established a Unit in the State of Bihar. The necessary approvals 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 05.08.2013 vide Annexure-2. As per the above police 35% of the total project will be financed by the Government of Bihar under a grant. The said grant will be released in the form of installments of 10%, 20%, 40% and 30%. Though the petitioners have completed the project and started production from 01.01.2015 vide Annexure-5, however, the authorities concerned are not taking any decision with regard to the release of the amounts under the above grant as envisaged under the scheme.

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 reliably come to the knowledge of the petitioners that the authorities are not passing the order on the ground that the



proposals have not been approved by the competent authority.

5. Learned counsel for the petitioners has stated that as per the policy of the Government of Bihar, separate approval by the competent authority is not necessary and the case of the petitioners falls under the policy of the year, 2008 for which the approval of the S.I.P.B. is 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 (*M/s Leoline Foods Private Limited Vs. The State of Bihar & Ors.*) and also the judgement dated 29.07.2019 passed in CWJC No. 12104 of 2018 (*M/s Sunny Stars Hotel Pvt. Ltd Vs. the State of Bihar & Ors.*) wherein this Hon'ble Court while dealing with similar issue as in the present case has allowed the said Writ Petitions and the S.L.P. filed against the order dated 10.08.2022 in CWJC No. 4051 of 2021 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 more specifically the issues that were framed by the



Division Bench to buttress his case and prayed this Hon'ble Court to allow the present Writ Petition.

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 (*M/s Leoline Foods Private Limited Vs. The State of Bihar & Ors.*) 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 prior to 2013 itself for which necessary approval was also granted by the S.I.P.B under the old policy.

9. A perusal of the impugned order shows that the authority concerned is not passing orders ostensibly on the ground that the 2016 policy requires the approval of the competent authority. The authority has not bothered to verify as to when the industry has been approved and started by the petitioners, admittedly in the present case the S.I.P.B. approval was of the year 2014 that is much before the 2016 policy came into existence.

10. The Division Bench of this Hon'ble Court in C.W.J.C. No. 4051 of 2021 (*M/s Leoline Foods Private Limited*



Vs. The State of Bihar & Ors.) at paragraphs No. 30(i)(ii)(iii), 47, 50, 51 & 52 of the judgement has framed the following issues among others as under:-

“30(i) “Whether the petitioner’s unit is covered by the Bihar Industrial Incentive Police, 2011 read with the food processing scheme of the State Government issued vide Memo No. 6699 dated 31.10.2008 and the scheme for integrated development of the food processing sector?”

30(ii) “Whether subsequent Bihar Industrial Incentive Police, 2016 shall have the effect of taking away the incentives which were available for eligible units under Bihar Industrial Incentive Policy, 2011?”

30(iii) “What is the effect of the provision under Clause 8 of Bihar Industrial Incentive Policy, 2016 concerning industrial units which have been approved by the competent authority in the event they commenced commercial production by 31.03.2017 ?”

and has held as under:-

“36. Relying on a Division Bench decision of this Court in the case of M/s Suprabhat Steel Limited (supra), the Division Bench held in the case of M/s Sunny Stars Hotels Pvt. Ltd. (supra) that the petitioners of that case acting on the promise having made the investments and fulfilled the criteria for drawing the incentives, the State Respondents cannot deny such incentives, applying the principles of promissory estoppel.”

“37. Following the decision rendered in the case of M/s Sunny Stars Hotels Pvt. Ltd. (supra), we are of the view that approval having already been granted by the S.I.P.B. headed by the Principal Secretary of the Department of Industries in favour of the



unit in question, the respondents cannot deny the benefits of the incentives under the Bihar Industrial Incentive Policy, 2011 to the petitioner.”

(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 concerned.

12. This Court in CWJC No. 12104 of 2018 dated 29.07.2019 (*M/s Sunny Stars Hotel Pvt. Ltd Vs. the State of Bihar & Ors.*) has held as under:-

“(b) In absence of the term ‘Competent Authority’ defined under the ‘Industrial Policy, 2011’, the approval granted by the State Investment Promotion Board, accepted by the concerned department in terms of Clause 14 of the ‘Industrial Policy, 2011’ and acted thereupon, there is no requirement of further approval by any other authority.

(d) In view of the definition of ‘Competent Authority’ present in the ‘Act of 2006 at Annexure P/3 to CWJC No. 2981 of 2019 the approval granted by the State Investment Board and acted upon by the concerned department in terms of Clause 14 for extending incentives to 2 of the 3 petitioners under the ‘Industrial Policy, 2011’, is a valid approval, not open to interference by any other authority on any ground, except eligibility and which is not an issue for the denial of the benefits.”

13. Having regard to the law laid down in the above cited judgements, the authorities cannot deny the benefits



envisaged under the Integrated Development of Food Processing Sector, 2008. The Writ Petition is allowed and the authorities are directed to pass necessary orders in favour of the petitioners. The petitioners are entitled to subsidy/incentives under Integrated Development of Food Processing Sector. The respondents are directed to ensure that the petitioners' actual entitlements for grant of incentives/subsidies under Integrated Development of Food Processing Sector 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.

14. The present Writ Petition is, accordingly, allowed.

(A. Abhishek Reddy , J)

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