

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8487 of 2023

Ashish Ranjan Son of Rajendra Prasad Singh, Resident of Village- Koilwan, Police Station- Haspura, District- Aurangabad proprietor of Om Aluminium/Progressive Industrial Training Centre, Police Station- Muffasil, District - Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Industries, Bihar, Patna.
2. The Bihar Industrial Area Development Authority, through its Managing Director 1st Floor Udyog Bhawan, Estate Gandhi Maidan, Patna.
3. The Managing Director, Bihar Industrial Area Development Authority, 1st Floor Udyog Bhawan, Estate Gandhi Maidan, Patna.
4. The Joint Managing Director, Bihar Industrial Area Development Authority, 1st Floor Udyog Bhawan, Estate Gandhi Maidan, Patna.
5. The Executive Director, Gaya Kalstar, 1st Floor Udyog Bhawan, Estate Gandhi Maidan, Patna.
6. The Head Accounts Officer, Gaya Kalstar, 1st Floor Udyog Bhawan, Estate Gandhi Maidan, Patna.
7. The Deputy General Manager, Bihar Industrial Area Development Authority, Gaya Kalstar, 1st Floor Udyog Bhawan, Estate Gandhi Maidan, Patna.
8. The Development Officer, Bihar Industrial Area Development Authority, 1st Floor Udyog Bhawan, Estate Gandhi Maidan, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kamendra Pd. Singh, Adv.
For Trusted	:	Mr. Indeshwari Pd., AC to GA3
For BIADA	:	Mr. Lalit Kishore, Sr. Adv.
	:	Mr. Ujjawal Bhushan, Adv.
For the Respondent/s	:	Mr. Subhash Pd. Singh (Ga3)

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

Date : 16-10-2023

Heard the learned counsels for the parties.

The present writ petition has been filed for the following

relief(s):-

“i. For setting aside the order dated 16.5.2023 passed in Appeal No.10 of 2023 whereby and whereunder



the allotment/settlement of land of the petitioner has been cancelled by the Appellate Authority Additional Chief Secretary, Department of Industries by affirming the order passed by the Deputy General Manager, Gaya Cluster vide its Memo No.267 dated 22.11.2022.

ii. For setting aside the order dated 17.5.2023 vide Memo No.97/G.C. issued by Assistant Regional Manager in the light of order passed in Appeal No.10 of 2023 by which he has directed the petitioner to hand over the possession of the cancelled unit to BIADA within three days otherwise forceful possession will be taken.

iii. For any other relief/reliefs for which the petitioner is legally entitled in the eye of law.”

3. Learned counsel appearing on behalf of the petitioner

has stated that the petitioner was initial allotted 10000 Sq. ft. of land for running the factory of aluminum utensils in the year 1995 and, thereafter, possession was delivered to the petitioner in the year 1996. That the petitioner after the allotment was made has started the unit and commenced production, however, due to efflux of time, the machinery became old and obsolete and, therefore, the unit ran into losses. That the petitioner made a request for change of industry but the same was rejected on 06.07.2009. The petitioner was directed to deposit a fee of Rs. 5,000/- (Five Thousand) for change of plan and also deposit a sum of Rs. 3,59,425/- (Three Lakh Fifty Nine Thousand Four Hundred



Twenty Five) as Jay Ghosh Rashi (bid amount) and the petitioner had deposited the said amount along with the interest on 05.09.2018. Even though the petitioner had paid the requisite amount and made the application in the year 2011 for change of industry, the authorities have not passed any orders and kept the application of the petitioner pending. Learned counsel has stated that as the petitioner did not get any response from the authorities, he was under the impression that the application of the petitioner for change of industry was approved. That the petitioner was issued a show cause notice seeking to cancel the allotment made merely on the ground that the petitioner was running an industrial training center without any permission. Learned counsel has stated that the Central Government i.e. Ministry of Labour and the appropriate authority for granting the affiliation and permission for running the industrial training center had been granted. However, the authorities without considering the application made by the petitioner for change of land use has cancelled the allotment of land. Though, the petitioner has filed an appeal before the Appellate Authority, the Appellate Authority without taking into account the fact that the petitioner has already paid the requisite amount for change of industry has rejected the appeal in a mechanical manner without giving any cogent reasons and



confirming to the order of cancellation. Learned counsel has stated that under similar circumstances, the BIADA authorities have allotted approximately 15000 sq ft. to one M/s Super Adarsh Private I.T.I for establishment of training institute for electrical & fitter, the petitioner is also similarly situated and there was no reason for the authority concerned to discriminate against the petitioner and cancel the allotment made to the petitioner more so when his application for change of industry was pending with the authorities. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition and set aside the impugned orders.

4. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has approached this Hon'ble Court with unclean hands and, therefore, is not entitled for any discretionary relief under Article 226 of the Constitution of India. Learned counsel has stated that the cancellation of the allotment made to the petitioner is for the second time. That initially the allotment was cancelled in the year 2007 and subsequently the said order of allotment was restored in the 26th Board meeting and six months time was given to the petitioner to start commercial production. However, the petitioner



has failed to do so and has started the industrial training institute without any approval or permission from the BIADA authorities. That the authorities concerned duly taking the fact that the petitioner is not using the allotted land for the purpose for which it was allotted has cancelled the allotment made to the petitioner. That as a result of the inaction of the petitioner to start the industrial production, the State has suffered financial losses and no employment was generated. That the very purpose for which the land was allotted has been defeated by non-starting of the industrial unit by the petitioner. That both the primary as well as the Appellate Authority duly taking into consideration the fact that the petitioner has not started the industrial activity as per the terms and conditions of the allotment have cancelled the allotment. Learned counsel has stated that initially the allotment was cancelled in the year 2007. However, taking a sympathetic view, the allotment was restored, but the petitioner failed to start industrial activity and, therefore, the allotment was cancelled for a second time. Learned counsel has stated that the petitioner was allotted the land way back in the year 1995 but till date the petitioner has not commenced any kind of industrial production. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition with costs.



5. Admittedly, in the present case, the petitioner was allotted the land by the BIADA authorities in the year 1995 for the purpose of establishing a factory of aluminum utensils. It is the case of the petitioner that he has initially started the aluminum utensils industry but due to efflux of time, the machinery had become outdated and obsolete and, therefore, the petitioner had stopped the production as it was running in losses. It is also admitted fact that the petitioner has made an application for change of industry and paid the requisite amounts in the year 2018. The fact that the petitioner has paid an amount of Rs. 5,000/- together with 3,65,824/- (Three Lakh Sixty Five Thousand Eight Hundred Twenty Four) on 05.09.2018 for change of plan has not been denied by the authorities.

6. A perusal of the impugned order passed by the Appellate Authority shows that the Appellate Authority has dismissed the appeal and confirmed the order of cancellation only on the ground that the petitioner is running an I.T.I. unit which is an unauthorized activity and that the same is in violation of the terms and conditions of the allotment. Besides, the above ground, the Appellate Authority has not given any other reason for dismissing the appeal filed by the petitioner and confirming the order of cancellation. Even though, in the counter-affidavit filed by



the BIADA authorities, it is specifically stated that the activity of running an I.T.I. institute is unauthorized activity and not an approved industrial activity. It is pertinent to note that BIADA authorities themselves have allotted an extent of 15,000 sq. ft. to M/s Super Adarsh Private I.T.I. vide Reference No. 4625/P260/Dev/BIADA/2013 dated 28.06.2013 (Annexure-12) when such is the case, it is not understandable as to how the authorities can take a stand that the running of the I.T.I. unit by the petitioner is not an approved activity as per the list of industries recognized by BIADA. Further, it is not out of place to mention that in the order passed by the Appellate Authority, there is no whisper with regard to the application made by the petitioner for change of industry and the amounts paid by the petitioner for change of industry. The authorities having collected substantial amount of Rs. 3,65,824/- together with Rs 5,000/- fees, cannot sit over the application made by the petitioner way back in the year 2018.

7. Having regard to the above facts and circumstances, this Court deems it fit to set aside the order of Appellate Authority dated 16.05.2023 and remand the matter back to the Appellate Authority to consider the appeal afresh duly taking into consideration the fact that the petitioner has made an application



for change of industry and also the fact that the BIADA authorities have allotted the land an extent of 15,000 sq. ft. to M/s Super Aadarsh Private I.T.I. vide letter dated 28.06.2013 (Annexure-12). The Appellate Authority shall pass a reasoned order duly granting an opportunity of hearing to the petitioner. The entire exercise shall be completed as expeditiously as possible preferably within a period of six weeks from the date of receipt of a copy of this order. Any order passed shall be communicated to the parties. As it is stated that the possession has already been taken by the BIADA authorities, the same shall remain with the authorities till the final orders are passed by the Appellate Authority.

8. With the above direction, the present writ petition stands disposed off.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.12.2023.
Transmission Date	NA

