

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8757 of 2023

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Sri K.S. Industries Industrial Area, Mohalla Ramchandrapur, P.S. Laheri
District Nalanda, Bihar Sharif through its proprietor Shanti Devi (F) 58 years,
Wife of Late Chaudhari Kaushlendra Kumar resident at and P.O.- Kachaharia
P.S.- Chandi (Nalanda) District- Nalanda ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Industries Department
Government of Bihar, Patna.
2. The Addl. Chief Secretary, Industries Department Government of Bihar,
Patna.
3. The Bihar Industrial Area Development Authority, through its Managing
Director, Bihar, Patna.
4. The Joint Director General, Bihar Industrial Area Development Authority,
Patna Cluster Officer, Industrial Area Patliputra Patna.
5. The Deputy Director General, Bihar Industrial Area Development Authority,
Patna Cluster Officer, Industrial Area Patliputra Patna.
6. The Commissioner, Industries Department Government of Bihar, Patna.
7. The Development Officer, BIADA East Gandhi Maidan, Patna.
8. The Area Officer, Industrial Estate Ramchandrapur Bihar Sharif, Nalanda.

... Respondents

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Appearance :

For the Petitioner	:	M/s Satish Kumar Sinha & Ashok Kr. Sinha, Advs.
For the State	:	Mr. Raghwanand, GA XI with Mr. Pratik Kumar, AC to GA XI
For the BIADA	:	Mr. Girish Kumar, Adv.

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

9 30-11-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the
following reliefs :

*(A) A writ in the nature of certiorari or any other
writ quashing the following order/s direction
quashing the following*

*(i) Order dated 5-12-2022 contained in Memo
No. 687 issued under the signature of Dy
Director General Patna Cluster, Cancelling the
allotment with respect to plot No. K 5 area 1900*



Squire Feet and forfeited the amount deposited by the petitioner for allotment of the land ignoring the application dated 13-10-2022 given by the petitioner to the Dy General Manager BAIDA(A) A writ in the nature of certiorari or any other writ quashing the following order/s direction quashing the following

(Annexure 6)

(ii) Order dated 31-05-23 passed appeal No. 46/2023 dismissing appeal filed against the by order the in the petitioner 5-12-22 dated contained in Memo No. 681.

(Annexure-11)

(B) A writ in the nature of mandamus or any other appropriate writ order/s direction commanding the respondents for following:

(i) To treat the orders contained in Annexure-6 and 11 to the petition are nonest in the eye of law.

(ii) To holder their order contained in Annexure 6 and 11 are suffering from error of records.

(iii) To hold that orders under challenge are in the teeth of aim and object of object of 'Biada'.

(C) To any other relief/s for which the petitioner is entitled to.

3. Learned counsel for the petitioner has stated that the petitioner has been allotted 1900 Sq.Ft. of land in the year 1990, initially for the purpose of Poultry Feed Industries, subsequently, in the year 2004 the same was



changed to Ready-made Garments. Counsel has stated that on the application made by the petitioner in the year 2010 the petitioner was granted permission to manufacture electrical items on 17.04.2010 and a fresh lease was executed by the Respondents authorities on 01.03.2011. That the petitioner has been conducting the business of manufacturing of small electrical items and the petitioner has also been recognized as MSME (Micro, Small & Medium Enterprises) unit and given Udyam Registration Certificate. Learned counsel has stated that the authorities concerned all of a sudden have inspected the premises of the petitioner and on the premise that the petitioner was not conducting any manufacturing activity sought to cancel the allotment made to the petitioner. That instead of cancelling the allotment the authorities have granted an opportunity to the petitioner and directed her to give a bank guarantee at the rate of 1% of the market value. That the petitioner was directed to submit a bank guarantee for a sum of Rs.4493/-. However, the petitioner could not give the bank guarantee for the said amount, as the bank refused to issue a bank guarantee for such a low sum. The petitioner left with no



other alternative has given a representation to the authorities concerned seeking permission to deposit the above said amount instead of bank guarantee there was no response from the said authority. That subsequently, the allotment made to the petitioner was cancelled vide order, dated 05.12.2022. Learned counsel has stated that the authorities without considering the explanation submitted by the petitioner or the request made by the petitioner to substitute the bank guarantee with an equal amount ought not to have cancelled the allotment. Further it is stated that the petitioner has preferred an appeal before the appellate authority vide Appeal No. 46 of 2023 and the appellate authority vide order, dated 04.05.2023, has directed the petitioner to submit a personal affidavit and also a bank guarantee for a sum of Rs.50,000/-. That pursuant to the said order the petitioner has furnished a bank guarantee, dated 20.05.2023 and deposited the same in the office of BIADA on 24.05.2023. The appeal was listed on 26.05.2023, however, the same was not taken-up and the matter was posted to 30.05.2023. On 30.05.2023 the counsel for the petitioner could not attend the said case



due to illness. The matter was adjourned to 31.05.2023. That the appellate authority without taking into consideration the earlier order passed by it on 04.05.2023, directing the petitioner to furnish the bank guarantee of Rs.50,000/- has passed the impugned order on 31.05.2023 upholding the order of cancellation. Learned counsel for the petitioner has stated that the petitioner being a widowed lady has been struggling to run the unit and has been running the unit right from the date of allotment. That the authority without taking into consideration the fact that the petitioner has started commercial production has cancelled the same without there being any valid reason. Learned counsel has stated that the appellate authority has also not taken into consideration the order passed by it on 04.05.2023 and in a mechanical manner dismissed the appeal upholding the order of cancellation. Learned counsel has drawn the attention of the Court to the electricity bills, the purchase and sale invoices and also the photos of the said premises to substantiate her claim that the unit was running and in production. Learned counsel has also drawn the attention of the Court to the letter, dated



24.05.2023 the bank guarantee and the same was on record as on the date of passing the impugned order on 31.05.2023. Learned counsel has stated that the appellate authority ought to have allowed the appeal filed by the petitioner as she has complied with the order of the appellate authority, dated 04.05.2023 and, therefore, prayed this Hon'ble Court to allow the present CWJC.

4. Per contra, the learned counsel appearing on behalf of the respondents has stated that the authority concerned has cancelled the allotment letter strictly in accordance with law, duly taking into consideration the fact that the petitioner was not running the unit and that the same was closed and in a dilapidated condition. Learned counsel has further stated that the authority concerned duly taking into consideration the fact that as on the date of inspection, the unit was closed and no activity was going on, has cancelled the allotment and the same has been upheld by the appellate authority. That said orders passed are strictly in consonance with law and needs no interference by this Hon'ble Court. Learned counsel for the respondents has prayed for dismissal of the present writ petition.



5. A perusal of the impugned order passed by the appellate as well as the primary authority shows that the authorities have decided to cancel the allotment made to the petitioner on the ground that as on the day of inspection conducted by the authorities there was no manufacturing activity being carried out by the petitioner and the said unit was closed. It is pertinent to note that the primary authority even though has issued a show cause notice seeking to cancel the allotment made to the petitioner has given an opportunity to the petitioner to furnish a bank guarantee of Rs.4493/-. However, the said condition could not be complied by the petitioner as the said amount was too meager and no Bank was ready to give the bank guarantee for the said amount. The petitioner has written the authorities seeking a clarification and to show her bonafides has also written a letter seeking to deposit the amount in lieu of the bank guarantee. However, no response has been given by the said authority and straightaway they have cancelled the allotment letter. It is also pertinent to note that the appellate authority vide order, dated 04.05.2023 has directed the petitioner to furnish an affidavit of undertaking



and also a bank guarantee for a sum of Rs.50,000/- and posted the matter to 26.05.2023. The petitioner has obtained the bank guarantee for the said amount of Rs.50,000/- on 25.02.2023 and deposited the same before the said authority on 24.05.2023 itself duly enclosing the copy of the representation. A perusal of the said representation filed by the petitioner shows that the authorities have received the said letter along with the bank guarantee and also the personal affidavit of the petitioner on 24.05.2023 and an endorsement is also made on the said representation. However, the appellate authority without taking the same into account has passed the order on 31.05.2023. The appellate authority has failed to take into consideration the earlier order passed on 04.05.2023 and passed the order impugned in the present writ petition without adverting to the above said fact. Once it is revealed that the petitioner has already complied with the order, dated 04.05.2023 and deposited the bank guarantee before the appellate authority and the same was on record as on the date of passing of the impugned order, the order upholding the order of cancellation of allotment sustained and the



same can not be said to legally valid. The authority having given an opportunity to the petitioner and directed her to file a bank guarantee ought to have verified as to whether the petitioner has complied with the said condition or not before passing the order.

6. Having regard to the fact that the petitioner has already complied with the order, dated 04.05.2023, the passing of the impugned order can not be legally sustained and, therefore, the same has to be necessarily set aside. More over, as seen from the record, i.e., the electricity bills, the sales invoices and also the photos filed by the petitioner show industrial activity being carried out in the said premises by the petitioner it can not be said that the petitioner is not carrying any activity.

7. Having regard to the same and also the fact that the bank guarantee furnished by the petitioner is valid till 19.05.2024 the impugned order passed by the appellate authority on 31.05.2023 and the order of the primary authority, dated 05.12.2022, are set aside. The petitioner is directed to strictly comply with the undertaking given by her in future.



8. With the above directions, the writ petition stands **allowed** to the extent indicated.

(A. Abhishek Reddy , J)

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