IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8864 of 2017

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M/s Amritesh Agro Products Pvt Ltd.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary, Department of Industries, Government of Bihar, Patna.
3. Principal Secretary, Department of Finance, Government of Bihar, Patna.
4. Director Technical, Department of Industries, Government of Bihar, Patna.
5. Director, Food Processing, Department of Industries, Government of Bihar, Patna.
6. Deputy Director Technical, Department of Industries, Government of Bihar, Patna.
7. Deputy Director, Food Processing, Directorate of Food Processing Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhaychal Singh, Sr. Adv.
	:	Mr. Abhimanyu Vatsa, Adv.
	:	Mr. Ram Binod Singh, Adv.
For the Respondent/s	:	Mr. Suresh Kumar, AC to GP1

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
Date : 28-07-2023

1. Heard the learned counsels for the parties.

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

> *"(i) To issue a writ of mandamus commanding the respondents to provide the benefits of the Industrial Incentive Policy, 2011 and the benefits of Food Processing Scheme, 2008 which has State Cabinet approval and declared by the Government of Bihar in terms and spirit to the petitioner;*
>
> *(ii) To issue a writ of mandamus directing the respondents to release the capital*

subsidy amount of Rs.283.91 Lacs to the petitioner in terms of the sanction granted to the petitioner in the meeting of the Project Approval Monitoring Committee ('PAMC') under Chairmanship of the Principal Secretary, Department of Industries, Government of Bihar in its meeting held on 14.3.2016 as also other incentives payable under the policy;

(iii) To issue a mandamus directing the respondents to fulfill their part of the obligations and to direct them to refrain from resiling from the promises made to the petitioner under the Industrial Incentive Policy, 2011 and Food Processing Scheme, 2008;

(iv) To direct the respondents to pay interest at the rate liable to pay to the Bank over the sanctioned amount of capital subsidy amount;

(v) To pass such other order/orders, direction/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. Learned counsel for the petitioner has stated that the petitioner basing on the policy decision taken by the Government of Bihar, namely, "Bihar Industrial Incentive Policy-2011" vide Annexure-1 and "Bihar: A Land of Immense Opportunities For Food Processing Industry 2008", vide Annexure-1/1 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 March 2014, but the authority concerned without taking into consideration the above has passed the impugned order.

4. Learned counsel for the petitioner has stated that the authority concerned without taking into consideration the above approval 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.

5. 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.

6. 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 the similar issue 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.

7. 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 most specifically the issue that was framed by the Division Bench.

8. *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. and also not denied the fact that the industry of the petitioner was started before the advent of 2016 policy and stated that the petitioner has applied for approval in the year 2014 itself and necessary approvals were also granted by the S.I.P.B.

9. On perusal of the impugned order it 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 2014 which is much before the 2016 policy was introduced.

10. 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.*
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> *(51) Having stated thus, we revert to answer the issues formulated in paragraph 30, which are determined as under:*
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> *(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 and therefore the decision of the Division Bench of this Court is not only binding on this Court but also on the authority.

12. 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 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.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.08.2023.
Transmission Date	N/A