

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16791 of 2022

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M/s Sarvshri Bihar Carbon Products through its partners 1. Anil Kumar aged about 34 years (Male) and 2. Pradeep Kumar, aged about 33 years (Male), son of Kaushal Kishore Singh, Resident of Ward 18, Kabiya Basu Tola, Kabia, P.S. Bhagwanpur, Dist. Begusarai.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Industries, Government of Bihar, New Secretariat, Patna.
2. Principal Secretary, Department of Industries, Government of Bihar, New Secretariat, Patna.
3. The Bihar Industrial Area Development Authority 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna, through its Managing Director, Patna.
4. The Executive Director BIADA, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
5. The Deputy General Manager, Begusarai Klaster, BIADA, Dist-Begusarai.

... .. Respondents

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Appearance :

For the Petitioner	:	Ms. Mira Kumari, Advocate
For the BIADA	:	Ms. Binita Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 04-05-2023

This case has been listed under the heading for orders on petition at the instance of learned counsel for the petitioner for early hearing. With consent of the parties, this writ application has been taken up for consideration.

2. Heard learned counsel for the petitioner and learned counsel for the Bihar Industrial Area Development Authority (in short the “BIADA”).



3. Petitioner, in the present case, is seeking the following reliefs:-

“A. For quashing the order dated 15/09/2022 passed by the Respondent No. 5 Deputy General Manager, Begusarai, Klaster vide memo no. 109 whereby and whereunder Id. Deputy General Manager, Begusarai, Klaster has cancelled the allotment of Plot measuring 0.5 Acre, Land 58 Part. (Annexure-9).

B. The Respondents be directed to change the constitution of Unit of the land in favour of the petitioners for production of Vermi Compost and black carbon products in the industries.

C. For any other relief or reliefs to which the petitioner may be found entitled to in the facts and circumstances of the case.”

Brief facts of the case

4. It is the case of the petitioner that M/s Sarvshri Bihar Carbon Product Industrial Area, Barauni (hereinafter referred to as the ‘petitioner’ or the ‘firm’) was allotted an area of 0.50 Acre bearing plot no. 128A(Part) and 129A(Part) in Barauni Industrial Area for a period of 99 years. The firm took possession of the land and over the period a small scale unit of manufacturing of Lamp Black Carbon (Black Carbon) was established. The Unit commenced its production but after death of the proprietor of the firm and due to lack of manpower and shortage of financial assistance, the production came down. The allotment of the unit was cancelled on 04.07.2017 which was challenged in this court in a writ petition which was allowed in favour of the wife of the original owner of the firm (since deceased).



5. It is stated that over the period the wife of the proprietor also became old and incapable to continue with the production work of the firm regularly. The firm required working capital and additional plant and machinery. It required modernization which could not become possible. At this stage, the two brothers who are cousin of the proprietor came to invest in the firm by bringing the working capital. They were made partners of the firm. An application for change of constitution of the partnership firm was filed which was also allowed by the BIADA vide order dated 27.04.2019.

6. It is the case of the petitioner that all of a sudden a show cause notice was served upon the petitioner vide memo no. 08 dated 18.07.2022 calling upon the petitioner to show cause as to why the allotment of the land be not cancelled for alleged violation of the terms and conditions of the agreement.

7. It is submitted that a reply to the show cause notice was filed through Mr. Anil Kumar, one of the partners of the firm vide Annexure '7' to the writ application but the allotment has been cancelled by order of the Joint Managing Director of BIADA vide Annexure '8' to the writ application on 15.09.2022.

8. Learned counsel for the petitioner submits that the cancellation of allotment has been done in exercise of power under



Section 6(2)(a) of the BIADA Act, 1974 (hereinafter referred to as the “Act of 1974”). It is submitted that once the firm had gone in production, thereafter clause (a) of sub-section (2) of Section 6 of the Act of 1974 would not be attracted.

9. Learned counsel submits that during the pendency of the writ application the plot in question has been taken over and allotted to one M/s Krishna Hydro Carbon Private Limited. Admittedly the new allottee has been handed over the possession of the plot. It is submitted that in such circumstance this Court may allow the petitioner to add the allottee as party to the writ application and cancel the impugned order as well as the order of allotment in favour of the new allottee.

Submissions on behalf of the BIADA

10. Ms. Binita Singh, learned counsel for the BIADA has opposed this writ application. It is submitted that the order against which the present writ application has been filed is an appealable order before the Chairman of BIADA. Petitioner did not avail its remedy of appeal which is statutory in nature and has moved this Court directly in its writ jurisdiction.

11. Learned counsel further submits that only after waiting for a period of one month which is the period of limitation for filing an appeal, the BIADA proceeded to make new allotment.



It is submitted that there was no interim order of this Court directing BIADA to refrain from making new allotments.

12. On merit, learned counsel submits that the land in question was allotted to the firm in the year 1981 but in course of inspection conducted by the Assistant Area Manager of Industrial Area, Barauni it was found that no industrial activity was being carried on at the allotted plot.

13. It is submitted that the industrial plots are allotted by BIADA for establishment of industrial units with an aim and object to help the entrepreneurs in the State of Bihar in making of a growing economy. In this case, since no industrial activity was going on, a show cause notice vide letter no. 1054 dated 22.06.2022 was issued to the petitioner asking as to why the allotment of land be not cancelled.

14. Learned counsel submits that as per the required rules an applicant who seeks transfer of his name and change of constitution is required to pay the transfer fee. In this case, the applicants who were introduced as partners had paid only the processing fee and they failed to adhere to the norms prescribed under paragraph '12' of the BIADA Land Allotment Policy, 2022. Annexure 'C' to the counter affidavit is a copy of the policy which has approval of the Board of Directors of BIADA.



15. Learned counsel submits that on finding that the petitioner had failed to start the commercial activity at the unit and in course of inspection when it was found that no commercial/industrial activity was going, the impugned order of cancellation was passed. It is, thus, submitted that no fault may be found with the order canceling the allotment of the petitioner's firm.

Consideration

16. Having heard learned counsel for the petitioner and the BIADA as also on perusal of the records, this Court finds that the facts of the case are not in dispute. The original allottee who was the proprietor of the firm has died. The two nephews of the original allottee have introduced themselves as partner of the firm and they intended to bring working capital. The BIADA has a policy in the matter of transfer of the firm/change in the constitution of the firm wherein a transfer fee at the required date is to be deposited.

17. The specific statement of the counter affidavit that in this case, the applicant had though deposited the processing fee, they had not deposited the transfer fee, have not been denied by the petitioner.



18. This Court further finds that there is no denial of the fact stated in the counter affidavit that in course of inspection, no industrial activity was found there. In fact, it is own case of the petitioner that after death of the original proprietor, his wife was also facing financial constraints in running of the unit. It is not the case of the petitioner that at any point of time they invested any substantial amount towards the working capital or started production in the firm with the help of financial assistance from any other sources. In these circumstances, this Court finds that the industrial plot was lying idle without any activity.

19. In such circumstance, a show cause notice was issued to the petitioner firm and thereafter, the order impugned in the writ application has been passed. The reasons provided in the impugned order categorically shows that even after assurance given to the BIADA that the production would be started after rainy season, in course of inspection, no industrial activity was found in the unit. In these circumstances, the BIADA has exercised its power under Section 6(2)(a) of the Act of 1974.

20. Section 6(2)(a) of the Act of 1974 reads as under:-

“6. (2)(a) In case necessary effective steps are not taken within the fixed period to establish the Industry or all dues, rent, charges of the Authority have not been paid within time or unregistered product is manufactured or any construction contrary to the approved plan has been carried out or an activity



injurious to industries has been engaged into¹⁰; the Authority shall in such condition cancel the allotted plot/shed and also forfeit the amount deposited in this connection. The Authority shall before cancelling the allotment allow one month time to the allottee to put up his case. The allottee on being dissatisfied with the order of the Authority may file an Appeal to the State Government within one month and the State Government shall, after due consideration dispose of within two months from the date of receipt of Appeal.¹¹”

21. This Court finds on perusal of Section 6(2)(a) of the Act of 1974 that for various reasons stated in the aforesaid provision, BIADA is within its power to take action for cancellation of the allotment.

22. Learned counsel for the BIADA submits and there is no contest to the submission at this stage that the order of cancellation of allotment has been passed on the order of the Joint Managing Director who has been authorized by BIADA to take a decision under Section 6(2)(a) of the Act of 1974. In the 75th Board meeting dated 21.05.2022, Joint Managing Director was given the power to cancel the allotment. The decision was issued vide Memo No. 2072/D dated 24.05.2022.

23. In the given facts and circumstances and pleadings available on the record, this Court is of the considered opinion that no fault may be found with the office order as contained in Memo

10 Inserted by the BIADA (Amendment) Act, 2017

11 Inserted by the BIADA (Amendment) Act, 1991



No. 109 dated 15.09.2022 (Annexure ‘8’) by which the allotment of the plot in question has been cancelled.

24. This writ application has, thus, no merit. It is dismissed. The Interlocutory Application, if any, stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-lekhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.05.2023
Transmission Date	

