

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.17576 of 2022**

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M/s. Henraajh Feeds India Pvt. Ltd. Having registered office at G 62, Ground Floor, P. C. Colony, Kankarbagh, Patna through its Managing Director namely, Jaydeep Narayan Srivastava, aged about 49 Years, Male, Son of Late Laxmi Narayan Srivastav, Resident of Neem Ghat, Water Tank Road, P.O.- Jhauganj, P.S.- Khjekalan, Patna City, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Vikas Bhavan, Bailey Road, Patna.
2. The Principal Secretary, Department of Industry, Vikas Bhavan, Bailey Road, Patna.
3. The Director of Industries, Government of Bihar, Vikas Bhavan, Bailey Road, Patna.
4. The Director (Technical), Department of Industries, Bihar, Patna.
5. The General Manager, District Industry Centre, Patna.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|---------------------------------------------------------------|
| For the Petitioner/s | : | Mr. S.D. Sanjay, Sr. Advocate.                                |
| For the Respondent/s | : | Mr. Kinkar Kumar, SC-9 with<br>Ms. Deepika Sharma, AC to SC-9 |

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**CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY**

**ORAL JUDGMENT**

**Date : 04-07-2023**

Heard the learned counsel for the parties.

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

(i) For quashing the order bearing Memo No. 350 dated 14.09.2022 issued by the Respondent Director, Food Processing, Department of Industry, Government of Bihar whereby the petitioner was denied grant of capital subsidy as promised under Integrated Development of Food Processing Sector Scheme, 2008 read with the Industrial Incentive Policy, 2011 without considering the fact that the petitioner commenced its commercial production on 23.05.2016 and the project of the petitioner was approved by S.I.P.B. and PAMC and therefore, the same ought to had been granted to the petitioner;



(ii) For direction upon the Respondents for grant of Capital Subsidy to the petitioner firm in terms of Clause 2Vii (d) read with Integrated Development of Food processing Sector Scheme, 2008 as promised and committed by the Respondent State of Bihar under the Industrial Incentive Policy, 2011 read with Integrated Development of Food Sector Scheme, 2008;

(iii) For the declaration that the petitioner firm is entitled for grant of Capital subsidy as promised under Food Processing Policy, 2008 in terms of Clause 2 (vii)(d) of the Industrial Incentive Policy, 2011 as the said unit fulfills the eligibility conditions as required under the Industrial Incentive Policy, 2011 and for a further direction to the Respondent State Government to disburse the amount of subsidy in favour of the petitioner at the earliest as promised by the Respondent;

(iv) For a declaration that in terms of the procedure laid down in Memo No. 387 dated 26.05.2015 cannot be made applicable on projects which has got S.I.P.B approval prior to the said Memo and moreover even if is held to be applicable, it was the duty and obligation of the Project Management Committee to get the same approved from the Minister, Department of Industry and the petitioner cannot be denied the benefits for fault/latches on part of the Respondents;

(v) For a direction upon the respondent to grant all other incentives to which the petitioner firm is entitled in terms of the promise and commitment made by the Respondent State of Bihar under Industrial Incentive Policy, 2011 as the petitioner firm has established its unit in view of the benefits of in terms of incentives promised by the respondent State;



(vi) For a direction to the respondents to grant the incentives at the earliest to save the petitioner firm as it is suffering due to non-grant of amount of Capital Subsidy in terms of Clause 2(vii) (d) read with Integrated Development of Food Processing Sector Scheme, 2008 and other incentives promised under the Industrial Incentive Policy, 2011.

3. Learned counsel for the petitioner has stated that the petitioner basing on the policy decision taken by the Government of Bihar, namely, “Bihar: A Land of Immense Opportunities For Food Processing Industry” (**Annexure-1**) and “Bihar Industrial Incentive Policy-2011” (**Annexure-1/A**) 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 2013, 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 approvals 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, this Hon'ble Court while dealing with the similar matter 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 while not disputing 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. has not denied the fact that the industry of the petitioner was



started before the 2016 policy and stated that the petitioner has applied for approval in the year 2013 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 2013 that is much before the 2016 policy.

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".



(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”.

(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.

(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 and therefore



the decision of the Division Bench of this Court is not only binding on this Court but also 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 Police, 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)**

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