

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9283 of 2021

=====

M/S Sharan Sappy, through its proprietor namely Pranaw Kumar Sharan alias Pranaw Kumar, aged about 62 years, (M), son of Late Budhdeo Sharan, resident of Opp. Durga Sthan, Mithanpura, P.S.- Mithanpura, District-Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Department of Industries, Vikas Bhawan, Bailey Road, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Vikas Bhawan, Bailey Road, Govt. of Bihar, Patna.
3. The Bihar Industrial Area Development Authority through its Managing Director, Udyog Bhawan, East of Gandhi Maidan, Patna.
4. The Managing Director, Bihar Industrial Area Development Authority, Udyog Bhawan, East of Gandhi Maidan, Patna.
5. The Executive Director, Regional Office, Bihar Industrial Area Development Authority, Muzaffarpur, Bihar.
6. Assistant Development Officer, BIADA, Region Muzaffarpur, Bihar.
7. The Area Incharge, BIADA, Region Muzaffarpur, Industrial Area, Bela, Muzaffarpur.
8. The Bihar State Financial Corporation, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Prakash Chandra, Adv.
For the Respondent/s : Mr. P. K. Shahi (Ag)

=====

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

11 24-04-2024 Heard the parties.

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

“(a) For that an appropriate writ or writs in the nature of certiorari may be issued setting aside the order/ communication of the Assistant Development Officer, BIADA Regional Office, Muzaffarpur vides Letter No. 1118, dt. 14.12.2020 whereby it was informed that the application and request for change of



product and reconstitution of the Unit, could not be considered because the unit's allotment stood cancelled, however, the petitioner has not been communicated any date of cancellation of the unit's allotment or its order either earlier or along with the aforesaid letter dt. 14.12.2020 and the said communication is without any justification and is arbitrary and unreasonable,

(b) For that an appropriate direction or directions may issued to the respondent Bihar Industrial Area Development Authority, Patna and its Regional Office at Muzaffarpur calling upon any cancellation order in relation to the Petitioner Unit, if any, and the petitioner further prays for setting aside the same being totally violative of statutory provisions and the principle of natural justice as at no point of time, the petitioner received a notice for cancellation or any cancellation order,

(c) For that appropriate writ or writs in the nature of mandamus may be issued directing upon the respondent BIADA to consider petitioner's application for change of product and of change in constitution of the Unit, in accordance with rules and the petitioner is ready and willing to abide by the legal formalities and to deposit any due amount to BIADA,

(d) For that the Hon'ble Court may be pleased to issue any other writ or writs as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. Learned counsel appearing on behalf of the petitioner has stated that the petitioner has applied for change of product and also for re-constitution of the firm. However, the same was rejected on 14.12.2020 stating that the authorities had already cancelled the allotment made in favour of the petitioner.



Learned counsel has stated that till date the petitioner did not receive the copy of the cancellation of allotment order and for the very first time the petitioner came to know about the order of cancellation vide letter dated 14.12.2020. Further learned counsel has stated that the petitioner has not been communicated with the copy of the cancellation order till date. That non communication of the order of cancellation of allotment was arbitrary, illegal, bad and opposed to principle of natural justice and equity. Therefore, the learned counsel has prayed this Hon'ble Court to set aside the impugned letter of rejection by allowing the present writ petition.

4. Per contra, learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the authorities after duly putting the petitioner on notice had cancelled the allotment way back in the year 2007. That a copy of the cancellation order is placed on record along with the counter affidavit filed by the respondents in March, 2022 but till date the petitioner has neither taken any steps to challenge the cancellation of allotment order nor denied the passing of the said order. Learned counsel has stated that petitioner has an alternative



and efficacious remedy of filing an appeal before the appellate authority. That the petitioner without availing the said remedy has straightaway approached this Hon'ble Court and the same is not permissible. Therefore, the learned counsel has prayed this Court for dismissing the present CWJC.

5. The Hon'ble Supreme Court in the case of *Thansingh Nathmal v. Supdt. of Taxes* reported in *1964 SCC OnLine SC 13* held as under:-

“7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the



petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

6. Having regard to the above made submissions and settled law, without going into the merits or demerits of the case, the present CWJC is disposed of leaving it open to the petitioner to challenge the order of cancellation dated



01.08.2007 (Annexure A of the counter affidavit) if he is so advised. If any application for condonation of delay in filing the appeal is filed by the petitioner, the same shall be considered by the authorities in accordance with law.

7. With the above directions, the present writ petition stands disposed off.

(A. Abhishek Reddy , J)

Bhardwaj/-

U			
---	--	--	--

