

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2419 of 2024

M/s Kalyani Poles A Partnership firm having its head office at K- 47/88-89, Machhodari, Bisheshwarganj, Varanasi, PIN- 221001, and Manufacturing Unit at Sudini More, Village- Kasap, P.S- Udwant Nagar, Ara, District- Bhojpur, PIN- 802206, through its Authorised Signatory Abhishek Agarwal, Son of Late Shambhu Nath Agarwal, Gender- Male, Age about- 47 years, Resident of- B-25/2-M-N-104, Flat No. 4, Sri Krishna Apartment Hanumanpura, P.S- Bhelupur, Varanasi, Uttar Pradesh PIN- 221001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Industries Department, Government of Bihar, Patna.
3. The Director Industries, Department of Industries, Government of Bihar, Patna.
4. The Director (Technical) Development, Department of Industries, Government of Bihar, Patna.
5. The General Manager, District Industry Centre, Bhojpur at Ara.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Adv.
For the Respondent/s	:	Mr. Government Advocate (11)
For the State	:	Mr. Raghwanand, GA-11
		Mr. Sanjay Kumar Tiwari, AC to GA-11

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

4 29-04-2024 The present writ petition is filed for the following
relief(s):-

“a) For issuance of a writ in nature of Certiorari for quashing the Memo No. SIPB/2241 dated 08.09.2023 issued by the Director Industries, Department of Industries, Government of Bihar, Patna whereby the claim of the petitioner for grant of Capital Subsidy in terms of Clause 2 (vii) of the Bihar Industrial Incentive Policy-2011 and the benefit of



reimbursement of the admissible Value Added Tax/Central Sales Tax/Entry Tax (VAT/CST/ET' for short) in terms of Clause 3 (i) of the Bihar Industrial Incentive Policy-2011 (hereinafter referred to as the "Policy") has been rejected for the reason that the petitioner unit has commenced the commercial production prior to the approval accorded by the State Investment Promotion Board/District Single Window Clearance Committee.

b) (hereinafter referred to as SIPB/District SWCC).

c) For issuance of writ in the nature of Mandamus directing the respondent authorities to grant and reimburse the incentive of Capital Subsidy (to the tune of Rs. 6,71,065/- against the Capital invested on Plant & Machinery) in terms of Clause 2 (vii) of the Industrial Policy-2011 and in terms of Memo No. 2437 dated 15.07.2011 and reimbursement of admissible VAT in terms of Clause 3 (i) of the Industrial Incentive Policy- 2011 and in terms of Memo No. 2446 dated 15.07.2011 – to the Petitioner Company from the date of coming into commercial production i.e. 02.05.2014.”

2. Learned counsel for the petitioner has stated that the impugned order is passed by the authority concerned solely on the ground that the petitioner has started production even before the approval has been granted by the State Investment



Promotion Board (SIPB).

3. Learned counsel has stated that under the Bihar Industrial Incentive Policy, 2011, the petitioner's entitlement for re-imbursement of VAT/CST/ET/ was denied on the ground that the petitioner has started commercial production even before the approval by SIPB and the authorities have rejected the case of the petitioner.

4. Learned counsel has stated that there is nothing under the regulation which states that the approval of the SIPB is a condition precedent for starting the commercial production. That the stand taken by the authorities is not only arbitrary, bad and illegal but also contrary to the scheme floated by the State of Bihar under the Bihar Industrial Incentive Policy, 2011, and therefore, prayed this Hon'ble Court to allow the present writ petition and give a direction to the authorities concerned for granting the incentives under the Bihar Industrial Incentives policy, 2011.

5. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the prayer of this writ petition and has stated that the petitioner has violated the terms and conditions of the policy.

6. Learned counsel has stated that the petitioner has



not taken prior approval of the SIPB before starting the production. The act of the petitioner in starting the production even before the approval was granted is in violation of the incentive policy, and therefore, the petitioner is not entitled to any incentive as envisaged under the Incentive Policy, 2011. Further, it is stated under similar circumstances the authorities have rejected the case of M/s Jagaran Prakash Limited, Gaya after taking opinion of the Law Department, and therefore, the petitioner's case which is also similar has also been rejected. Learned counsel for the respondents has prayed to dismiss the present writ petition.

7. Admittedly, in the present case, the State of Bihar has floated Bihar Industrial Incentive Policy, 2011 to attract investments in the State. The petitioner, admittedly, has applied to the Competent Authority i.e. SIPB and was granted approval on 09.01.2015 and as per the said policy, the petitioner is entitled for re-imbursement of VAT/CST/ET/. But, the case of the petitioner has been rejected on the sole ground that the petitioner has started commercial production even before the grant of approval by SIPB. The said stand taken by the official respondents appears to be an arbitrary and frivolous one. Admittedly the authorities have invited investors/ industrialists



to invest in the State of Bihar by floating the Bihar Industrial Incentive Policy, 2011 and under the scheme some incentives have being offered to the Businessmen who have established their industries. The stand taken by the respondent that the petitioner has started production even before the grant of approval is without any legal basis. The policy does not lay any guidelines or restrictions on the industrialists that the production cannot be started before the approval by SIPB is granted and does not state that any person who starts production without getting the necessary approvals from SIPB is disentitled to the incentives. Admittedly in the present case, the approval was granted on 09.01.2015 and it is the case of the respondents that the commercial production has started on 02.05.2014 merely because the production is started the incentive under the scheme cannot be disallowed. At the most, the incentives can be granted from the date of the approval of SIPB but the authorities cannot deny the incentives under the scheme as a whole.

8. Having regard to the above made submissions, the court does not find any valid reasons for upholding the impugned order passed by the authorities and the same is set aside. The authorities are directed to grant the incentives as envisaged under the Bihar Industrial Incentive Policy, 2011



from the date of approval of the SIPB and make necessary payments to the petitioner as per the entitlement within a period of three months from the date of receipt of the copy of this order.

(A. Abhishek Reddy , J)

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