IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5280 of 2024

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M/s Enaviya Food and Beverage Pvt. Ltd., A Company registered under the Companies Act, 2013 and having its registered office at 15/12, Kamruddinganj, Bihar Sharif, Nalanda-803101, Bihar, through its Managing Director and Authorized Person Sanjay Kumar, Male, aged about 52 years, son of Mr. Jainendra Kumar, Resident of Mohalla-Kamruddinganj, P.S. Laheri, District-Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar the Additional Chief Secretary, Industries Department, Bihar, Patna.
2. The Director, Industries, Government of Bihar, Patna.
3. The Director, Food Processing, Industries Department, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prince Kumar Mishra, Advocate.
For the Respondent/s	:	Mr. Kumar Manish, SC-5 with
		Mr. Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 24-07-2024

Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

> *"(i) For issuance of writ in the nature of certiorari or any other appropriate writ, for quashing the Memo No. 161 dated 23/02/2024, issued by Director, Food Processing Directorate, Bihar, Patna, whereby and whereunder, the claim of petitioner for grant of subsidy under Scheme for Integrated Development of Food Processing Sector, 2008 and Bihar Industrial Incentive Policy 2011, has*

been rejected in most arbitrary and illegal manner, by passing a cryptic and erroneous order, which deserves to be quashed.

(ii) For issuance of writ in the nature of mandamus, directing and commanding upon the concerned respondent to release the subsidy of Rs. 250.29 Lakhs, to the petitioner under Scheme for Integrated Development of Food Processing Sector, 2008 and Bihar Industrial Incentive Policy-2011, as petitioner company has already complied its obligation, under the policy and is entitled to same under the policy.

(iii) For holding and declaring that actions of respondent authorities in rejecting the claim of petitioner for subsidy of Rs. 250.29 Lakhs, to the petitioner under Scheme for Integrated Development of Food Processing Sector, 2008 and Bihar Industrial Incentive Policy-2011, is illegal and arbitrary."

3. It is a case of the petitioner that pursuant to the Scheme for Integrated Development of Food Processing Sector, 2008 and Bihar Industrial Incentive Policy 2011, the petitioner has set up a unit for fruit flavoured water and vitamin water at Fatuha, Patna with an estimated project cost of Rs. 9 crores. That the project was granted approval by the State Investment Promotion Board (SIPB) in the meeting held on 05.08.2015. That the petitioner was granted some of the incentives under the Scheme for Integrated Development of

Food Processing Sector, 2008 and Bihar Industrial Incentive Policy 2011. That the unit of the petitioner came into commercial production in March, 2017 and the same was informed to the competent authorities of the Government. Though, the petitioner was entitled to the incentives guaranteed under the Scheme for Integrated Development of Food Processing Sector, 2008 and Bihar Industrial Incentive Policy 2011 but the same were being denied. The petitioner left with no other option had approached this Hon’ble Court by way of CWJC, which was numbered as CWJC No. 9026 of 2017. The said CWJC was allowed by this Hon’ble Court vide judgement dated 16.08.2023. However, the authorities have passed the impugned Memo No. 161 dated 23.02.2024 (Annexure P/7) rejecting the claim of the petitioner.

4. Learned counsel appearing on behalf of the petitioner has stated that the reason for rejecting the incentives promised under the above mentioned schemes is contrary to the clauses mentioned under the said scheme. The authority under the mistaken impression that the unit of the petitioner has to be in continuous production for a period of five years from the date of commercial production, has rejected the entitlement of the petitioner for the incentives envisaged under the said

scheme. Learned counsel has drawn the attention of this Court to the direction issued by this Hon'ble Court in CWJC No. 9026 of 2017 and also the Resolution dated 15.07.2011 (Annexure P/8) more particularly Clause 9 of the said resolution to buttress his contention that the reason given by the authority is an erroneous one. Learned counsel has therefore prayed this Hon'ble Court to set aside the impugned memo challenged in the present writ petition and remand the matter back to the authority concerned for passing orders afresh duly taking into consideration the true purport of Resolution dated 15.07.2011.

5. Per contra, the learned counsel appearing on behalf of the Respondent-Authorities has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that that authority duly taking into consideration the fact that the unit of the petitioner was not functioning properly has rightly rejected the application of the petitioner for grant of incentives. That the unit of the petitioner was not running continuously for the period of five years after coming into commercial production. That the physical inspection of the unit by the inspection team revealed that the unit of the petitioner is not been run continuously and as per

one of the report it was revealed that; (i) the two main production machines were found closed (ii) at the site raw material and ready product were not in terms of the production capacity (iii) there was no electricity connection issued in the name of the petitioner (iv) GST Returns in respect of March 2023-June, 2023, August 2023 and there was no document in support of the same. That even earlier also the General Manager, District Industries Centre, Patna had reported that the petitioner's unit was closed. Though the petitioner has been given sufficient time and personal hearing to produce the necessary documents to evidence that the unit of the petitioner was in continuous production for a period of five years from the date of commercial production, the petitioner has failed to produce any documentary evidence to substantiate the above claim. Learned counsel has therefore prayed this Hon'ble Court to dismiss the present writ petition.

6. Admittedly in the present case the petitioner had earlier approached this Hon'ble Court by way of CWJC No. 9026 of 2017 and this Court vide order dated 16.08.2023 has directed as under:-

> *"Having regard to the same, the writ petitions are allowed setting aside the impugned order passed by the authority concerned. The petitioners are entitled to*

> *subsidy/incentives under Integrated Development of Food Processing Sector. The respondents are directed to ensure that the petitioners' actual entitlements for grant of incentives/subsidies under Integrated Development of Food Processing Sector 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."*

7. That a site inspection report was called for from the General Manager, District Industries Centre, Patna before the meeting of Project Approval and Monitoring Committee (PAMC) and the site inspection report dated 22.09.2023 vide letter No. 1906 reveals that the unit of the petition was not functioning and thereafter a decision was taken to reinspect the unit once again on 19.10.2023 and updated report was sought. The joint inspection team was constituted for the inspection of the unit and the joint inspection team expressed dissatisfaction over the functioning of the unit period for the five years from the date of commercial production. The joint inspection team has reported as under;

> *"(i) Two main production machine was found closed.*
> *(ii) At the site raw material and ready product was not in terms of the production capacity of the Unit,*
> *(iii) No electricity connection was issued*

> *in the name of unit.*
> *(iv) GST Return with respect of March 2023-June 2023, August 2023 was found to be Nil and no document was produced in support thereof.*

8. Thereafter the respondents have passed the order dated 23.02.2024 vide Memo No. 161 rejecting the claim of the petitioner for incentives, the reasons given by the authorities for rejecting the claim are as under:-

> *"(i) Two machines of main production line (RO Plant & Dysfunction lab) were found shut down and bottle packaging work was being done much below its production capacity.*
> *(ii) During inspection, the raw material (prefoam) and final product was found to be much less than the prescribed capacity. During inspection, it appeared that the Unit has not been in function previously.*
> *(iii) It is noteworthy that the electricity connection in the name of M/s Enaviya Food & Beverage Pvt. Ltd. is not available. And, the unit has been operating on rented generator for the past several years."*

9. In the said order, a specific stand has been taken that the unit should be functioning for the period of five years from the date of commercial production and the same was absent. Though the petitioner was asked to submit necessary documents, he has failed to do so. Therefore, the rejection

order.

10. In the counter affidavit filed by the Respondents at paragraph No. 15, it is stated as under:-

> *"That as per clause 9 of the Memo No. 2437 dated 15.07.2011 (Industrial Incentive Policy, 2011) it is stipulated that unit which receive grant have to remain in production for five years."*

11. The Clause 9 of the Memo No. 2437 dated 15.07.2011 is extracted below:-

> "(9) उपरोक्त सभी अनुदान–प्रोत्साहन इकाई के व्यावसायिक उत्पादन प्रारंभ करने के पश्चात् ही देय होगी। अनुदान प्राप्त इकाईयों को उपर्युक्त कोई भी सुविधा प्राप्त करने के पश्चात् लगातार समान्यतया 5 वर्षों तक कार्यरत रहना अनिवार्य होगा। "

12. A bare reading of the above clause reveals that the unit should be in production for a continuous period of five years from the date of grant of the incentives and not from the date of commercial production. Obviously the authority has misdirected itself and came to the conclusion that the unit of the petitioner should be in continuous production from the date of commercial production which is contrary to the Clause 9 of the Resolution dated 15.07.2011, therefore, the impugned order is liable to be set aside on this ground alone.

13. Having regard to the same, the impugned order is set aside and the matter remanded back to the authority

concerned for passing the orders afresh duly taking into consideration the Resolution (Memo No. 2437) dated 15.07.2011 more specifically Clause 9 and also the observations made by this Court. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of receipt of the copy of this order. It is needless to mention that before passing any orders, the petitioner shall be put on notice and given an opportunity of hearing. Any order passed shall be communicated to the party.

14. With the above directions, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

shakir/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2024
Transmission Date	NA