IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6689 of 2023

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M/s Malhotra Polyplast, a Partnership firm, having its Unit at C-7, Patliputra Industrial Area, Patna 800013, through its Partner Ripul Malhotra, aged about 40 Years (male), Son of Ramesh Chandra Malhotra, Resident of Mohalla Malhotra Compound, R.K. Bhattacharya Road, Near Radha Krishna Apartment, Phulwari, P.O. GPO, P.S. Gandhi Maidan, District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industries, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industries, Government of Bihar, 2nd Floor, Vikas Bhawan, Bailey Road, Patna-800015.
3. The Principal Secretary, Department of Commercial Taxes, Government of Bihar, Patna.
4. The Additional Commissioner, Commercial Tax Department, Government of Bihar, Patna.
5. The Director, Technical Development, Department of Industries Bihar, Patna.
6. The General Manager, District Industries Centre, Udyog Bhawan, East Gandhi Maidan, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Suraj Samdarshi, Adv.
For the Respondent/s : Mr. Ajay (Ga 5)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL ORDER

14 04-12-2024

1. Heard the learned counsels for the parties.

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

> *"i) To issue an appropriate writ, order or direction in the nature of mandamus commanding the respondents to disburse VAT/GST reimbursement subsidy for which the petitioner is entitled to from 01.04.2017 till 30.06.2017 and from 01.07.2017 till 31.03.2023,*

in view of the promise made by the State Government under the Bihar Industrial Incentive Policy, 2011.

ii) This Hon'ble Court may adjudicate and hold that the petitioner is entitled to receive VAT/GST subsidy in accordance with Bihar Industrial Incentive Policy, 2011.

iii) This Hon'ble Court may adjudicate and hold that Bihar Industrial Incentive Policy, 2011 having been issued by the State Government after approval by the Cabinet, cannot be diluted by any of the Departments of the State, to deny any incentive promised therein.

iv) This Hon'ble Court may adjudicate and hold that non-issuance of VAT/GST subsidy is hit by the principle of promissory estoppel and legitimate expectation.

v) This Hon'ble Court may award the cost of litigation on account of the illegal and arbitrary actions of the Respondent Authorities."

3. Learned counsel for the petitioner has stated that the petitioner basing on the policy decision taken by the Government of Bihar, namely, "A Land of Immense Opportunities For Food Processing Industry" vide Annexure-1 & "Bihar Industrial Incentive Policy-2011" vide Annexure-2

have 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, 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 approval 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 petitioners’ 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 rendered by a Division Bench of this Hon’ble Court in C.W.J.C. No. 4051 of 2021 along with its analogous cases, this Hon’ble Court while dealing with the similar issue has allowed the said writ petition and granted the

relief to the petitioner therein. The S.L.P. filed against the order of the Division Bench has 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 cases dated 10.08.2022 more 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 has not disputed 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.. The respondents have 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 2012 itself and necessary approvals were also granted by the S.I.P.B.

9. On perusal of the impugned order it reveals 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 in 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 2012 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 cases 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".*
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> *(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 been upheld by the Hon'ble Supreme Court and is binding on this Court.

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 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.

(A. Abhishek Reddy , J)

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