IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12218 of 2023

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M/s Balajee Mini Steels and Re- Rolling Pvt. Ltd. A Company registered under Indian Companies Act, 1956 having its Office at 603, Luv-Kush Tower, Exhibition Road, Patna- 800001, through its Director Pradeep Kumar Sahewal aged about 52 years (M), Son of Laxmi Chand Sahewal, Resident of 705, Surya Bihar Apartment, Exhibition Road, Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Principal Secretary, Industries Department, Government of Bihar, Patna.
3. The Director Industries, Government of Bihar, Patna.
4. Department of Finance (Commercial Taxes) Department, through the Commissioner Cum Secretary, Department of Finance (Commercial Taxes), Bihar, New Secretariat, Patna.
5. South Bihar Power Distribution Company Limited, through Chief Engineer (Commercial), South Bihar Power Distribution Company Limited, Patna, Bihar.
6. Electrical Executive Engineer, Bihta Division, South Bihar Power Distribution Company Limited.
7. The State Investment Promotion Board, Patna Bihar, through its Secretary.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Shama Sinha, Adv.
	:	Mr. Sachin Kumar, Adv.
For Respondent BIADA	:	Mr. Parth Gaurav, Adv.
For the Respondent/s	:	Mr. Vikash Kumar (Sc11)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
Date : 18-12-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following relief(s):-

> *"(I) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing the order bearing Memo No. SIPB/1462 dated 24.11.2022 issued under the signature of Director Industries, Government of Bihar vide which it has been communicated to the Petitioner Company vide which the State*

Investment Promotion Board (herein after SIPB) has rejected the application of the Petitioner dated 04.02.2016 for approval of its project under Industrial Incentive Policy 2011 (hereinafter referred as "Industrial Policy") without considering the eligibility of the Petitioner in terms of the policy and further without considering that the Petitioner commenced its commercial production on 18.06.2016 after completing all essential compliances and getting necessary approvals as required under law, and thus it has deemed approval as per law and policy for availing benefits of Industrial Policy and/or is entitled for approval by SIPB as per law.

(II) For declaration that Petitioner company is entitled to declaration of deemed approval/ approval of its Project by SIPB as it fulfilled all the necessary criteria and have already commenced production since 18.06.2016 within the time prescribed under the Industrial Policy after complying with all legal requirements.

(III) For declaration that Petitioner company is entitled to all the incentives and subsidies under Industrial policy, 2011 for its Project from the date of its application and starting of commercial production, considering that the project has/had deemed approval/ approval by SIPB as it fulfilled all the necessary criteria in terms of the industrial policy and application was made within the time provided under industrial policy.

(IV) For declaration that letter no. 500 dated 04.03.2016 has no connection with the project (Unit-II) which was under consideration for approval by the SIPB and thus is/was irrelevant for consideration of application of the Petitioner Company.

(V) For issuance of writ in the nature of mandamus directing and commanding upon the respondent no. 2 and 4 to reimburse subsidy under the heading of Value Added Tax (for brevity referred as

"VAT") in terms of Clause 3 (i) of the Industrial Policy for which eligibility certificate has been granted by General Manager, District Industry Centre, Patna vide memo no. 792 dated 28.06.2016 as required under Industrial Policy and notification issued vide memo no. 2446 dated 15.07.2011.

(VI) For issuance of writ in the nature of mandamus, directing and commanding upon the respondent no. 2, 5 and 6 to reimburse Electricity Duty to the Petitioner Company from December 2018 to May 2023 in terms of Clause 2 (vi) under Industrial Incentive Policy-2011 for which eligibility certificate was granted to the Petitioner company by General Manager, District Industry Centre, Patna vide memo no. 792 dated 28.06.2016 and incentive of exemption from electricity duty was granted to the Petitioner from July 2016 to November 2018 but later was withdrawn in arbitrary manner without any showcause or notice and without granting any opportunity of hearing and further without assigning any reason.

(VII) To any other relief or reliefs for which the Petitioner is found to be entitled in the facts and circumstances of the case."

3. It is the case of the petitioner that the unit of the petitioner was started on 18.06.2016 and duly taking the same into consideration, the petitioner has been granted several incentives under the Industrial Incentive Policy, 2011. However, the authorities have rejected the case of the petitioner for grant of reimbursement of VAT/ Capital Subsidy/ remission of Electricity for the period from December, 2018 to May, 2023.

4. Learned counsel appearing on behalf of the petitioner has stated that the act of the respondents in rejecting some of the

claims for the above mentioned incentives, on the ground that the approval of the project was not obtained from the State Investment Promotion Board (SIPB) is bad, illegal and perverse. That without considering the fact that the commercial production of the unit had started on 18.06.2016 and as per 2011 policy the petitioner is entitled to all the benefits. Learned counsel has stated that as per the terms and conditions of the Industrial Incentives Policy, 2011, the petitioner is eligible for incentive from the date of production. That under the said policy, the authority is bound to issue the incentives for units which have started commercial production after the date of inception of the said scheme. Learned counsel has stated that some of the incentives were already given by the authority and therefore, non-granting of some of the subsidies is bad, arbitrary and contrary to the provisions of the Industrial Incentive Policy, 2011.

5. *Per contra*, the learned counsel appearing on behalf of the respondent-State has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner does not have necessary permission from the SIPB and, therefore, not eligible for the incentives which it is asking. Learned counsel has stated that the petitioner was obligated to submit some documents which have not been furnished, therefore, the

authorities have rejected the claim of the petitioner for the above incentives. That unless and until the SIPB approval is there, no incentives under the Industrial Incentive Policy, 2011 can be granted. Learned counsel has therefore prayed for dismissing the CWJC.

6. In order to appreciate and resolve the issue involved in the present writ petition, it is necessary to extract the relevant portion of the Bihar Industrial Incentives Policy, 2011, which reads as under;

> *"In view of the rapid changes in the Global Industrial Scenario, Bihar Industrial Incentive Policy- 2006 has been reviewed with an objective to attract domestic and foreign investment as well as revival and expansion of business operations of the existing industrial units by providing the right industrial ambience. After reviewing the same, it was felt that in view of the present scenario, it is imperative that a new industrial incentive policy be prepared so as to promote balanced industrial development and enable industries to contribute towards the social and economic development of the State.*
>
> *In the above background, a new Industrial Incentive Policy -2011 has been prepared based on the suggestions and consultations with the main Industry Associations such as- Bihar Industries Association, Bihar Chamber of Commerce, Confederation of Indian Industry, Bihar, Laghu Udyog Bharti, Hazipur Udyog Sangh etc. and other related organizations and concerned Government Departments. The industrial policies of different neighboring States have also been considered in formulation of this policy.* ***Under this proposed policy, there are***

provisions for granting incentives such as, 100% Exemption from Stamp Duty and Registration Fees during the pre-production phase, Capital Subsidy for industrial units, inclusion of Entry- Tax in the re-imbursement of 80% of VAT, incentive also to existing units for Captive Power Generation / Diesel Generating sets and subsidy on non-conventional sources of energy production, re-imbursement of expenses incurred on project reports, technical know-how fees, Quality Certification, Electricity Duty etc. With the implementation of Industrial Incentive Policy- 2011, it is expected that the development of the State will get a boost and it will result in rapid industrial development with enhanced employment generation. *The industries of Bihar would be able to play a positive role in the overall development of all the citizens of Bihar.*

Clause 9. *Any unit, new or existing, will be able to avail incentives under the Industrial Incentive Policy-2011 only when the unit has not availed such incentives under any other Government Policy. The units at the time of availing these incentives will have to submit a declaration to this effect.*

Clause 12. The incentives / subsidies / relief's outlined in this policy shall be available to only such new industrial units which commence commercial production within five years from 1st July, 2011.

Clause 16. *This Policy will come into effect from 1st July 2011 and will remain in operation till 5 years.*

(Definitions)

1. Effective date: *"Effective date" means the date on which the provisions of this Policy come into force i.e. 1" July, 2011 This Policy will remain in force for 5 years from 1" July, 2011.*

2. Industrial Unit/Industrial Establishment: *Industrial unit / Industriai establishment means any unit/establishment engaged or to be engaged in* *manufacturing/processing/servicing industry under the following categories:*

a) Industries listed under the First Schedule of the Industries (Development and Regulation) Act 1951 as amended from time to time.

b) Industries falling within the purview of the following Boands/Agencies;

(1) Small Industries Board

(2) Coir Board

(3) Silk Board

(4) All India Handloom and Handicraft Board

(5)Khadi and Village Industries Commission

(6) Any other agency constituted by the Government of India or Government of Bihar for industrial development

c) Other categories:

(1) Mining or development of mines

(2) The maintenance, repair, inspection or servicing of any type of machinery of any description or vehicles or vessels or motorboats or trailers or tractors.

(3) The setting up or development of an Industrial Area, Industrial Estate, Integrated Infrastructure Development, Export Promotion Industrial Park, Export Promotion Zone or Growth Centre.

(4) Providing special or technical knowledge or other services for the promotion of industrial growth,

(5) Providing Engineering, Technical, Financial, Managerial, Marketing or other services or facilities for industry.

(6) Providing services relating to Information Technology. Telecommunication or electronics including satellite linkage and audio or visual cable communication.

(7) Tourism.

3. Existing Industrial Unit:

"Existing Industrial Unit" means an industrial unit which is in commercial production.

4. New Industrial Unit:

"New Industrial Unit" means an industrial unit in which commercial production has commenced within five years from 1" July, 2011.

5. Sick Unit:

"Sick unit" means an industrial unit declared sick by the Board for Industrial and Financial Reconstruction under the Sick Industries Companies (Special Provision) Act, 1985 or by the State Apex Committee for small and medium industric. headed by the Director of Industries or the High Level Empowered Committee headed by the Chief Secretary for large sector.

6. Fixed Capital Investment:

The 'Fixed capital investment' means an investment made in land, building plant and machinery as well as productive assets of permanent nature.

7. Expansion/Modernization/Diversification:

"Expansion/Modernization/ Diversification of an existing unit would mean additional fixed capital investment in plant and machinery to the extent of 50% or more of the undepreciated value of fixed capital investment in the existing unit leading to incremental production capacity which would not be less than 50% of the initial installed capacity. In order to qualify a unit undertaking expansion/modernization/ diversification should send prior intimation to the General Manager, District Industries Centers or the Managing Director, Bihar Industrial Area Development Authority as the case may be in respect of Small/ Medium Industry and Director of Industries/Director, Technical Development in case of large industries before undertaking such expansion/ modernization/ diversification Programme.

Such intimation should be accompanied by detailed expansion/modernization/diversification proposal giving the specific period of proposed additional investment.

8. Micro/Small/Medium/Large and ancillary industrial units

These are such industrial units which have been defined by the Government of India fixing investment limits from time to time.

9. Date of Production:

The "Date of Production" of an industrial unit shall mean the date on which the unit actually commences commercial production of the item for which the unit has been registered.

As regards the date of production of Small and Medium units, the certificate issued by the respective General Manager, District Industries Centre or Managing Director, Industrial Area Development Authority would be valid For large industries, the certificate issued by Director Technical Development will be acceptable. In case of any dispute regarding the date of production, the decision of the Industries Secretary shall be final.

10. Option to Industrial Units

Such industrial units which have not commenced commercial production on the effective date of this policy, but have made 50% capital investment will have the option for incentives either under the Industrial Incentive Policy -2006 or Industrial Incentive Policy -2011. They will not be eligible for part incentive under both the policies. Such units will have to submit their written option to Director of Industries within 3 months from the effective date of this new policy.

1. Effective date: *"Effective date" means the date on which the provisions of this Policy come into force i.e. 1st July, 2011 This Policy will remain in force for 5 years from 1st July, 2011.*

> ***4. New Industrial Unit:*** *"New Industrial Unit" means an industrial unit in which commercial production has commenced within five years from 1st July, 2011."*
>
> ***9. Date of Production:*** *"The "Date of Production" of an industrial unit shall mean the date on which the unit actually commences commercial production of the item for which the unit bas been registered.*
>
> *As regards the date of production of Small and Medium units, the certificate issued by the respective General Manager. District Industries Centre or Managing Director, Industrial Area Development Authority would be valid. For large industries, the certificate issued by Director Technical Development will be acceptable. In case of any dispute regarding the date of production, the decision of the Industries Secretary shall be final".*

7. Admittedly as seen from the record, the petitioner was granted some of the incentives under the Bihar Industrial Incentive Policy, 2011. The petitioner has been granted exemptions under monthly minimum charges/minimum base energy charges/demand charges/ billing demand. The said facility was available for a period of five years starting from the date of Industrial Promotion Policy, 2011.

8. That insofar as the incentives for capital subsidy/ reimbursement of VAT and electricity duty is concerned, the Clause 2(vii), 3(i) and 3(iii) reads as under;

> "2(vii) **Capital Subsidy**
>
> a. New MSME industrial units will be granted 20% capital subsidy on the amount

spent on plant and machinery subject to a maximum of Rs. 75 lacs (seventy five lacs).

b. New large industrial units will be granted 20% capital subsidy on the amount spent on plant and machinery subject to a maximum of Rs. 500 lacs (five hundred lacs).

c. Above Capital Subsidy will be available to such industries which will come into commercial production after the effective date of this policy and the capital subsidy will be available only on the capital investment made on Plant & Machinery by such industries. This facility will be available only after the commercial production of the industrial unit.

d. Since food processing sector units are already entitled for capital subsidy under food processing policy, therefore such units will not be entitled for above capital subsidy under this policy.

3. **Tax Related Incentives**

(i) Re-Imbursement of VAT and Entry-Tax

a) This facility will be available to new MSME/ Large Industries. The eligible industrial units will be issued a passbook (paper / electronic) by the State Government in which the details of the Bihar VAT paid to Finance (Commercial Taxes Department) would be entered. The General Manager, District Industries Centre/ Managing Director BIADA (whichever is applicable) will issue the passbook to eligible Industrial Units and will verify that the unit under consideration is in production and the unit has deposited the amount of VAT. On the basis of such certificate, that the unit is in production, the Finance (Commercial Taxes) Department will reimburse the amount of VAT after certification/verification of the payment of VAT.

b) All new units will be entitled to avail 80% reimbursement against the admitted VAT amount deposited in the account of the Government, for a period of ten years. The ceiling for this reimbursement will be 300% of the capital Invested.

But new industrial units of Brewery and Distillery will be reimbursed a maximum of only 25% of the paid VAT, which will be applicable for 10 years and the ceiling for this reimbursement will be 300% of the capital invested.

Clarification: This incentive would not be payable on the amounts imposed as penalty and the difference of amount between tax assessed and accepted under the Central Sales Tax Act,1993 /Bihar Finance Act, 1981.

(ii) Following incentive will be provided to the new industrial units after the commercial production

100% exemption in luxury tax for seven years

100% Re-imbursement of electricity duty for seven years

100% exemption in land conversion charge"

9. Admittedly in this particular case, the petitioner has started the commercial production on 18.06.2016 and the eligibility certificate and passbook for VAT necessary for giving the benefit of VAT have already been issued in favour of the petitioner. It is pertinent to note that the petitioner has been given eligibility certificate issued by the General Manager, District Industry Centre, Patna, vide Memo No. 792 dated 28.06.2016.

10. Further, it is to be noted that the authorities have given the benefit of electricity till the Month of October, 2018 and, thereafter, the same has been abruptly stopped from Month of

January 2019. The petitioner has been recommended for benefits under the electricity from December, 2018 till May, 2023 by virtue of Memo No. 792 dated 28.06.2016. Though the authorities have initially given the said benefits have stopped the same from the month of January, 2019 for the reasons best known to them. In the counter-affidavit filed by the respondents, it is categorically stated that the petitioner does not have the approval of SIPB and that the petitioner was asked to supply the some documents and also issue certain clarifications vide letter no. 500 dated 04.03.2016 and the petitioner has not replied to the same. However, the fact remains that the petitioner has given a suitable reply to the said letter on 15.3.2016 (Annexure-P/14). However, the authorities for the reasons best known have not communicated to the petitioner as to what action they have taken after receipt of the letter dated 15.03.2016 issued by the petitioner. In the counter-affidavit filed by the respondents, it is stated that as the petitioner did not answer the query made by the respondents vide letter dated 04.03.2016 (Annexure P/13), the authorities did not take any decision. That subsequently after filing of the writ petition by the petitioner, the authorities have passed an order rejecting the claim of the petitioner solely on the ground that the petitioner has not given a proper reply to the letter dated 04.03.2016. However it is to be noted that under the Bihar Single Window Clearance Act, 2006, the authorities are bound to process the application within the fixed time framed and in case the same is not processed then the application is deemed to have been approved. Ostensibly Section 13 of the said Act provides a fixed time period in which the applications have to be processed and approval given or rejected as the case may be. That in case the same is not processed within a particular time frame Section 14 provides for deemed approval. Therefore the contention of the respondents that the petitioner does not have the SIPB approval is without any legal basis. The application made by the petitioner on 04.02.2016 has to be necessarily held to be approved as the authorities have not passed any order either rejecting or approving the same within the time framed fixed. Further it is to be noted that the petitioner has already commenced production on 18.06.2016 therefore the question of rejection of the application made by the petitioner for granting the incentives under the Industrial Policy, 2011 vide the impugned order dated 24.11.2022 cannot be sustained. Once the petitioner has commenced the production on 18.06.2016 and the rejection of the application for grant of the incentives/subsidies under the Industrial Policy, 2011 vide letter dated 24.11.2022 has to be necessarily held to be bad, illegal and in derogation of the provisions of the Bihar Single Window Clearance Act, 2006, which fixes a time frame for granting of approval or rejecting the application filed by the Industrialists. In this case the authorities have not passed any order rejecting the same therefore the said application is deemed to have been approved. Further, the policy of 2011 does not lay any emphasis on the approval of the unit of SIPB but lays emphasis on the date of production.

11. Having regard to the above mentioned facts and circumstances, the present writ petition is allowed. The authorities are directed to calculate the incentive/ subsidies for the above mentioned items and take necessary steps for making payments as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above direction, the present writ petition stands allowed.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.06.2025.
Transmission Date	NA