

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16164 of 2022

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M/s Responce Renewable Energy Limited a Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at 76, Pandit Purushottam Roy Street, 3rd floor, Kilkata - 700007, West Bengal, through its General Manager namely Sant Prasad, (Male), aged about 45 years, son of Sri Dudh Nath Tiwari, Resident of Baramudi, P.S. Baramudi, District - Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

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

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16335 of 2022

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M/s. Glatt Solution (P) Limited, A Private Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at 76, Pandit Purshottam Roy Street, 3rd Floor, Kolkata- 700007 through its General Manager namely Sant Prasad, (Male), aged about 45 years, Son of Sri Dudh Nath Tiwari, Resident of Baramudi, P.S.- Baramudi, District- Dhanbad (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
2. The Principal Secretary, Department of Industry, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
3. The Director of Industries, Department of Industry, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
4. The Deputy Director (Technical), Department of Industries, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
5. The General Manager, District Industry Centre, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 16164 of 2022)

For the Petitioner/s	:	Mr. SD Sanjay, Sr. Adv.
	:	Mr. Mohit Agarwal, Adv.



For the Respondent/s : Mr. Lokesh Kumar, Adv.
: Mr. Rahul Kumar, Adv.
: Mr. Ravish Chandra, AC to SC6
(In Civil Writ Jurisdiction Case No. 16335 of 2022)
For the Petitioner/s : Mr. Mohit Agarwal, Adv.
For the Respondent/s : Mr. Zaki Haider, AC SC9

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

Date : 15-12-2023

Heard the parties.

Both the cases are disposed off by this common order as
the issue in both the matters is one and the same.

CWJC No. 16164 of 2022 has been filed for the
following reliefs:-

“i) For quashing of the Letter dated 12.09.2022 bearing Memo No. SIPB/906 issued under the signature of the Respondent Director of Industries, Bihar Patna whereby the Petitioner's entitlement for grant of 2% Interest Subsidy under the Industrial Incentive Policy, 2011 was rejected on the ground that the said subsidy was introduced with effect from 20.01.2015 and the Petitioner had its SIPB approval prior to the date of coming into effect of the said subsidy without considering the fact that the Respondent Dy. Director (Technical), Bihar, Patna vide its letter No. 1209 dated 28.06.2013 has communicated the decision taken by SIPB Committee vide its minutes of meeting dated 24.05.2013 that the date of entering into Power Purchase Agreement shall be considered to be the date of SIPB approval of the project of the Petitioner and in Petitioner has entered into Power Purchase Agreement with BSPHCL on 14.09.2016 which is post the date of Amendment No.11 dated 5.01.2015 and hence the decision of the said Respondent is wholly arbitrary and contrary to the scheme of the Industrial Incentive Policy, 2011;



ii] For issuance of writ/direction/order, directing the respondents to forthwith reimburse the interest subsidy of 2% for the period 01.04.2017 to 31.07.2018 and subsequent there upon, on the term loan amount of rupees 49.92 crores availed from State Bank of India, by the Petitioner Company as promised under the Industrial Incentive (Amendment) Policy, Bihar, 2014 vide letter bearing letter no. 11/Patna dated 5.01.2015, as the same has not yet been credited in the account of the petitioner company despite fulfillment of eligibility condition;

iii) For a declaration that the Petitioner is entitled for the interest subsidy from the date of its commercial production ie since 30.03.2017 till 7 years as promised by the Respondents under the Industrial Incentive (Amendment) Policy, Bihar, 2014 vide letter bearing letter no. 11/Patna dated 5.01.2015;

iv) For a declaration that the respondent cannot deny the benefits promised under the Industrial Incentive Policy, 2011 as amended by Industrial Incentive (Amendment) Policy, Bihar, 2014 as the petitioner company fulfilled all the eligibility criteria as required under the said policy;

v) For a direction to the Respondents for grant of subsidies at the earliest to save the Petitioner's unit as it is suffering due to non imbursement of the amount of interest subsidy of 2% on term loan; and/or for any other relief[s] for which the Petitioner may be found entitled to in the facts & circumstances of the present case."

CWJC No. 16335 of 2022 has been filed for the

following reliefs:-

“(i) For quashing of the order dated 26.09.2022 issued vide Memo No. SIPB/1114 dated 26.09.2022 under the signature of the Respondent Principal Secretary, Department of Industries, Government of Bihar, Patna where by the claim



of the Petitioner for 2% interest subsidy as promised under the Industrial Incentive Amendment) Policy, Bihar, 2014 vide letter bearing letter no. 11/Patna dated 5.01.2015 was denied on the ground that the SIPB and competent authority approval to the project of the Petitioner was prior to the date of amendment ignoring the fact that the Respondent Deputy Director (Technical), Department of Industries, Government of Bihar, Vikash Bhawan, Baily Road Patna vide its Letter No. 1208 dated 28.06.2013 had communicated that the SIPB vide its meeting dated 24.05.2013 had given consent that the date of Power Purchase Agreement with BSPHCL shall be considered the date of approval by SIPB and the Petitioner had entered Power Purchase Agreement with BSPHCL vide agreement dated 14.09.2016 which is after the date of Industrial Incentive (Amendment) Policy, Bihar, 2014 bearing letter no. 11/Patna dated 5.01.2015;

ii] For issuance of writ/direction/order, directing the respondents to forthwith reimburse the interest subsidy of 2% for the period 01.03.2017 to 31.07.2018 and subsequent there upon, on the term loan of an amount of rupees 16.50 crores availed from State Bank of India, by the Petitioner Company as promised under the Industrial Incentive (Amendment) Policy, Bihar, 2014 vide letter bearing letter no. 11/Patna dated 5.01.2015, as the same has not yet been credited in the account of the petitioner company despite fulfillment of eligibility condition;

iii) For a declaration that the Petitioner is entitled for the interest subsidy from the date of its commercial production ie since 28.02.2017 till 7 years as promised by the Respondents under the Industrial Incentive (Amendment) Policy, Bihar, 2014 vide letter bearing letter no. 11/Patna dated 5.01.2015;

iv] For a declaration that the respondent cannot deny the benefits promised under the Industrial Incentive Policy, 2011 as



amended by Industrial Incentive (Amendment) Policy, Bihar, 2014 as the petitioner company fulfilled all the eligibility criteria as required under the said policy;

v) For a direction to the Respondents for grant of subsidies at the earliest to save the Petitioner's unit as it is suffering due to non imbursement of the amount of interest subsidy of 2% on term loan; and/or for any other relief[s] for which the Petitioner may be found entitled to in the facts & circumstances of the present case."

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 grant of 2% interest subsidy was denied on the ground that the petitioner has started commercial production even before the approval by SIPB and 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. 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. 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 14.09.2016. 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 in the state of Bihar. The stand taken by the respondent that the petitioner has started production even before the grant of approval and therefore not entitled to any incentive under the scheme is without any legal basis. The aforesaid policy does not lay any guideline or restrictions on the industrialists that the production cannot be started before the approval by SIPB is granted and does not state that any industry which starts production without getting the necessary approvals from SIPB is dis-entitled to the incentives under the scheme. Admittedly in the present case, the approval was granted on 14.09.2016 and it is the case of the respondents that the commercial production has started on 30.03.2017, 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 all



together. This Hon’ble Court vide order dated 10.10.2023 in CWJC No. 11004 of 2023 and in other judgments has held that the incentive under the Bihar Industrial Incentive Policy, 2011 cannot be denied solely on the ground that the commercial production has been started prior to obtaining permission from SIPB.

8. Having regard to the above, 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.

9. The present writ petitions are allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.01.2024.
Transmission Date	NA

