(2023) 02 PAT CK 0071

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15633 Of 2018

M/S Apex Pet Products Pvt. Ltd — APPELLANT

Vs

State Of Bihar — RESPONDENT

Date of Decision : 27-02-2023

Acts Referred:

Citation : (2023) 02 PAT CK 0071

Hon'ble Judges : Purnendu Singh, J

Bench : Single Bench

Advocate : Sunil Kumar, Sriram Krishna, Akash Chaturvedi

Final Decision : Disposed Of

Judgement

1. Heard Mr. Sunil Kumar assisted by Mr. Sriram Krishna, learned counsel appearing on behalf of the petitioner and Mr. Akash Chaturvedi, learned counsel appearing on behalf of the State.

2. In the present writ petition, the petitioner has prayed for following relief(s):

"I. For quashing the letter contained in Memo No. 3573 dated 23.11.2017 only to the extent of the petitioner by which the claim of the petitioner for payment of Subsidy amount Rs. 29,58,069/- against the investment made in establishment of the Unit as per the Bihar Industrial Incentive Policy, 2011 has been rejected merely on the ground that investment proposal was not approved by the competent authority.

II. Also to direct the respondents to make payment of compensation amount Rs. 6 Crores to the petitioner as due to all of a sudden announcement of banned on whole sale and retail trade and consumption of Foreign Liquor/country made liquor in State of Bihar by the State respondents, the production of Pet-Preform (row material for Pet-Bottles) of the petitioner's Unit has been badly effected as due to announcement of Band on Foreign/country made liquor the demand of Pet-Preform as well as Pet-Bottles has been badly effected in the State of Bihar and due to which the petitioner has suffered economically allot.

III. Also for any other relief/reliefs for which the petitioner is found in the eye of law."

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner's unit came into production in the year 2014 and as per the Industrial Policy 2011, the petitioner was also given subsidy by the Industries Department, Government of Bihar, thereafter, the petitioner made a proposal for expansion of his unit and invested around Rs. 2 crores for increasing capacity of existing unit from 700 mt. to 1200 mt per day capacity of Pet-preform unit situated at Hajipur. A meeting was held on 31.08.2015 in which incentive was to be considered separately by the concerned department as per the policy. In support of the said contention, the petitioner referred to Annexure-5, a later received from the Director, Technical Development, Bihar, Patna. The petitioner has been denied subsidy even after he has increased production and invested a huge amount only on the ground that the competent authority for disbursement of subsidy has not approved the project in terms of Clause 2.2 of the Notification dated 128 dated 16.01.2006 which was enforced even after 2011 Policy. In view of the said Clause 2.2 a proposal above of Rs. 1 crores are required to be placed before the State Investment Promotion Board (SIPB). Learned counsel further submitted that for the first time the said objection has been raised in counter affidavit filed by the respondent-State to deny the legitimate subsidy to the petitioner in garb of the present excise policy which has been introduced in the year 2016.

4. Learned counsel in support of his contention has relied on a judgment dated 13.08.2019 passed in CWJC No. 2672 of 2017 and submitted that the law is well settled that the respondent State cannot deny the incentive on the principle of promissory estoppel as laid down in the judgment relied upon including the one rendered in the case of M/s Suprabhat Industry Steel Ltd. Vs The State of Bihar reported in 1995 (2) PLJR 536 (DB), which was later affirmed by the Apex Court reported in (1999) 1 SCC 31. The respondent-State therefore cannot turn around and reject the claim without communicating any reason for such rejection and for the first time has made frivolous/misconceived statement in the counter affidavit in support of the denial.

5. Per contra, learned counsel appearing on behalf of the respondent submitted that since the competent authority has not approved the case of the petitioner for grant of incentives the case of the petitioner has been rejected. In support of the contention learned counsel has not brought even a chit of paper that such objection was ever raised before enactment of Bihar Prohibition and Excise Act, 2016 or at any point of time the same was any authority of the State.

6. Having considered the rival submissions of the parties and materials available on record, it is admitted that the petitioner has made proposal for extension of his unit in terms of 2011 policy to enhance the production from 700 MT to 1200 MT and the said fact is supported by several communication and the internal

communication made between the parties or between the different departments of the State. It is also admitted that petitioner has invested a total amount of Rs. 1,47,90,349/- on which account he claims that he is liable for total amount of Rs. 29,58,089/- of subsidy.

7. In view of the judgment passed by the Apex Court in case of M/s Suprabhat Industry Steel Ltd. Vs The State of Bihar reported in (1999) 1 SCC 31, the State having made an investment in terms of the Industrial Policy, 2011 to the extent that incentive benefit to the parent industries and the petitioner have been made expansion fulfill the criteria for drawing the incentive. The respondent-State cannot deny the incentive on the principle of Promissory estoppel as laid down in M/s Suprabhat Industry Steel Ltd. Vs The State of Bihar (supra).

8. In such circumstances, this Court directs that State Government particularly the Industries Department and all the concerned departments including the State Taxes Department to ensure that other incentive to which the petitioner is found entitled under Industrial Policy, 2011 shall be accorded to him within maximum period of two months. Taking into account as a result of total prohibition in the State after coming into force of Bihar Prohibition and Excise Act, 2016, the petitioner has been forced to wind up his industry and has to incurred loss of Rs. Six crores.

9. With the above observations and directions, the present writ petition is disposed of.

