

(2024) 03 J&K CK 0042

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 444 Of 2022

M/s ATM Industries

APPELLANT

Vs

Union Territory Of Jammu And Kashmir

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Citation : (2024) 03 J&K CK 0042

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Achal Sharma, K. D. S. Kotwal

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1. Through the medium of instant petition, the petitioner has sought a direction upon the respondents to process its case under the Jammu and Kashmir State Industrial Policy, 2016 for allotment of 4 kanals of land as per Land Availability Certificate bearing No. SICOP/EMK/151/55 dated 30.09.2020.

2. According to the case of the petitioner, it had applied for allotment of a plot of land in SICOP Industrial Area, IID Centre, Govindsar, Kathua on portal of the Industries & Commerce Department, Jammu for setting up of an Industrial Unit under the name and style of "M/s ATM Industries" as per the procedure, that was in vogue at that time in the year 2020. It has been further submitted that the request of the petitioner was uploaded on portal "udyogjk" and upon receipt of 10% premium/cost of the plot, "Land Availability Certificate" bearing No. SICOP/EMK/151/55 dated 30.09.2020 was issued in favour of the petitioner. It has been submitted that vide communication dated 30.09.2020 issued by the Divisional Manager (E) to the General Manager, District Industries Centre, Kathua, a request was made for putting up the case of the petitioner before Single Window Clearance Committee.

3. It has been submitted that in terms of Clause 4.2.1(c) of the J&K Industrial Police, 2016, the General Manager of District Industries was supposed to forward the case of the petitioner through email to the members of Single Window Clearance Committee for issuance of power availability certificate. It has been submitted that the Executive Engineer, PDD was supposed to issue power availability certificate within one month in terms of Clause 4.2.1 (f) of the Industrial Policy 2016, whereas the Pollution Control Board was supposed to issue NOC within one month in terms of Clause 4.2.1(g) of the policy. According to the petitioner, despite repeated requests to the General Manager, District Industries Centre, Kathua to put up its case for clearance before the Single Window Clearance Committee, no action has been taken by the respondents.

4. In the month of April, 2021 a New Industrial Police of 2021-31 was declared by the Government and the petitioner was directed to again upload its proposed project on the portal with an assurance that its case will be definitely cleared as the Land Availability Certificate has already been issued in favour of the petitioner in whose favour the plot has already been earmarked. However, no action was taken by the respondents. It has been submitted that the petitioner has fulfilled the criteria and on the basis of Clause 2.12 of the Industrial Policy 2016, it is entitled to allotment of a plot on the basis of first come first serve principle, particularly when it has already deposited the premium of Rs. 1,60,000/- with the respondents.

5. The respondents have filed reply to the writ petition, in which they have submitted that as per Clause 4.2.1(a) of the Industrial Police of 2016, the petitioner was supposed to apply for provisional registration by making an application online and uploading the requisite documents. It has been submitted that it is only after provisional registration has been made that the case is to be placed before the Single Window Clearance Committee, which approves the project after due diligence and decide the quantum of land to be allotted.

6. According to the respondents, in the instant case, the petitioner after obtaining Land Availability Certificate did not apply online for provisional registration, as such, the unit of the petitioner could not be registered. On this ground, it has been submitted that there is no question of placing the case of the petitioner before the Single Window Clearance Committee for approval. It has been submitted by the respondents that the petitioner has failed to apply online within the stipulated time when the Industrial Policy of 2016 was in vogue, therefore, the petitioner was required to apply afresh to the Single Window Portal under the New Industrial Police of 2021-31. It has been further submitted that under the new Policy, the procedure for allotment of land has been changed. Since the petitioner applied for provisional registration only on 15.06.2021 after the adoption of New Industrial Policy, as such, its case has to be considered in the light of the New Industrial Policy.

7. I have heard learned counsel for the parties and pursued the record.

8. The question that requires to be determined in this case is as to whether the case of the petitioner for allotment of land is to be considered by the respondents under the Old Industrial Policy, 2016 or under the New Industrial Policy 2021-31. Learned counsel for the petitioner has contended that the petitioner had applied for allotment of land in the year 2020 vide his application dated 26.08.2020 when Industrial Policy of 2016 was in vogue, therefore, his case has to be processed under the said policy. In support of this contention, the petitioner has relied upon the judgment of the Division Bench of this Court in the case of CDLOW No. 08/2018, titled, State of J&K and ors. vs. Irshad Ahmad Mir and anr. decided on 09.02.2023, wherein the Division Bench of this Court has held that if the application is submitted under the Old Industrial Policy and the same could not be processed in time because of the reason not attributable to the applicant, the said case has to be considered under the Old Policy and the New Industrial Policy cannot be made applicable retrospectively.

9. The main issue that arises for determination in this case is as to whether the petitioner had applied under the Industrial Policy of 2016 or the Industrial Policy of 2021-2031. Much reliance has been placed by the petitioner upon the communication dated 30.09.2020 addressed by the Divisional Manager to the General Manager, District Industries Centre, Kathua, in which reference has been made to the application of Mr. Rajiv Mansotra that was uploaded on web portal of the Industries & Commerce Department on 26.08.2020.

10. Copy of the application dated 26.08.2020 stated to have been made by the petitioner with the respondents, has not been placed on record by the petitioner. According to the respondents, the application made by the petitioner was only for getting "Land Availability Certificate" and the said application was not for provisional registration, as has been claimed by the petitioner. The record produced by the respondents also does not give any clue as to whether the petitioner has at any time applied for provisional registration prior to coming into effect of Industrial Policy 2021-31. In the absence of any material to support the contention of the petitioner, it has to be inferred that the petitioner had only applied for Land Availability Certificate and not for provisional registration in terms of clause 4.2.1 of the Industrial Policy of 2016.

11. Learned counsel for the respondents has brought to the notice of this Court the procedural guidelines for establishment of an industrial unit in terms of Industrial Policy of 2016-26. Clause 1.5 of the said guidelines, which is relevant to the context, reads as under:

"Registration of all enterprises shall be done by the General Manager of DIC concerned, subject to any other conditions(s) laid by the State/Central Government from time to time in this behalf. Besides that, registration of a unit proposed to be established in any industrial estate managed by SIDCO/DICOP shall not be done without confirmation of availability of land suitable for setting up of the proposed unit, by concerned Corporation."

12. From a perusal of the aforesaid clause, it is clear that registration of a unit proposed to be established in any industrial estate, cannot be done without confirmation of availability of land suitable for setting up of the proposed unit, meaning thereby that obtaining of Land Availability Certificate was a pre-condition for applying for the provisional registration in terms of Industrial Policy of 2016. It seems that the petitioner had applied for Land Availability Certificate, which it obtained but there is nothing on record to suggest that pursuant to obtaining of the Land Availability Certificate, it had applied for provisional registration. In this view of the matter, the case of the petitioner could not be placed before the Single Window Clearance Committee, which is a stage post the registration of the unit.

13. The reliance placed by the petitioner upon the judgment of the Division Bench of this court in the case of *Irshad Ahmad Mir (supra)* is misplaced for the reason that in the said case not only provisional registration had been issued in favour of the writ petitioner but even the allotment of land had also been made in favour of the writ petitioner. However, the premium in respect of the land was being demanded from the writ petitioner under the New Industrial Policy. It is in these circumstances that the Division Bench held that the case of the writ petitioner is to be dealt with under the Old Industrial Policy. In the instant case, neither any allotment of land has been made in favour of the petitioner, nor he had applied for provisional registration. Therefore, the facts of this case are clearly distinguishable from the case of *Irshad Ahmad Mir (supra)*. Thus, ratio laid down in aforesaid case cannot be made applicable to the instant case.

14. In view of the above, I do not find any merit in this writ petition. The same is, accordingly, dismissed.

15. Record, as produced, be returned to the learned counsel for the respondents.