

(2021) 03 PAT CK 0192

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 22922 Of 2018

M/S Naturals Dairy Private Ltd @APPELLANT @Hash State Of Bihar And Ors

Date of Decision : 22-03-2021

Acts Referred:

Citation : (2021) 03 PAT CK 0192

Hon'ble Judges : Anjani Kumar Sharan, J

Bench : Single Bench

Advocate : Sanjay Singh, Nikhil Kumar Agrawal, Aditi Hansaria, Naresh Dixit, Suresh Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner, learned counsel for the Bihar Industrial Area Development Authority (hereinafter in short as 'BIADA') and learned counsel for the State.

2. Pleadings being complete, with consent of all the parties, this writ petition has been heard at length for final disposal at this stage itself.

3. The petitioner has approached this Court seeking the following reliefs:

i. To issue an appropriate writ (s)/ order (s) /direction(s) in the nature of Certiorari quashing the order dated 20.11.2018 as contained in memo no. 5195 dated 22.11.2018 (Anx-16), whereby the appeal filed by the petitioner being Appeal Case No. 06/2017 has been dismissed on non-est and perverse grounds by respondent no. 2.

ii. To issue an appropriate writ/order/direction in the nature of Certiorari quashing the order dated 31.03.2016 (Anx-8) whereby the allotment of Industrial Plot No. NS11 at Patliputra Industrial Area, Patna, has been cancelled and also the order dated 27.12.2016 (Anx-12) affirming the said cancellation.

iii. To issue an appropriate writ /order/direction in the nature of Mandamus directing the Respondents not to take any coercive action against the petitioner's

plot.

iv. To issue an appropriate writ /order/direction in the nature of Mandamus directing the respondents to allow the petitioner to run his unit without any hindrance.

v. To stay the operation of the order dated 20.11.2018 as contained in memo no. 5195 dated 22.11.2018 (Anx-16) till the final disposal of the present writ petition.

vi. To any other relief(s) that the petitioner is entitled to in the facts and circumstances of the case.

4. The petitioner is a company duly incorporated under the provisions of the Indian Companies Act, 1956. Petitioner is operating a factory which was established in the year 2008 for the purpose of manufacturing milk, ghee, paneer, dahi, ice-cream and other milk related products. Petitioner's unit has a daily production capacity of 25000 liters of milk, in addition to production of milk products like ghee, paneer, butter and ice-cream. For this purpose, petitioner's unit was allotted an industrial plot bearing no. NS-11 admeasuring 24032 sq. ft. by the respondent no.4 at Patliputra Industrial Area, Patna under registered lease agreement dated 01.02.2008. The unit has also been financed by the banks in order to meet the capital requirement and is running successfully till date.

5. Suddenly in the month of August, 2015, the petitioner received a notice dated 27.08.2015, whereby an explanation was sought from him within a period of 30 days in connection with alleged inspection as done in the premises of the petitioner with a finding of no production activity visible and also that there had taken place an illegal construction of two storied building. Pursuant thereto, the petitioner submitted a detailed explanation on 17.09.2015. On 10.12.2015, again final notice seeking explanation from the petitioner against the proposed cancellation of allotment was issued. Thereafter, the petitioner personally met the respondent nos. 5 and 6, pursuant to the show cause notice dated 10.12.2015 and persuaded them to explain the cause behind frequent notices for proposed cancellation of allotment for alleged violation of the Rules and conditions for allotment of plots by BIADA. On 28.01.2016, petitioner received a letter issued by the Area In-charge of the Industrial Area to stop operation of the retail outlet in the name and style of 'Doodh Malai'. Vide letter dated 04.03.2016, the petitioner submitted a detailed explanation to respondent no.6. In response to the show cause notice dated 10.12.2015, the petitioner rebutted all the allegations and informed about the status of various incentives being made available to him from different governmental sources. Respondent no. 5 vide his order dated 31.03.2016, proceeded to cancel the allotment of the petitioner with forfeiture of the security deposit and directed restoration of possession. Against this, the petitioner filed an application dated 04.04.2016 before the respondents for restoration of his allotment. But the respondent no.6 rejected the request of the petitioner. On 21.11.2016, petitioner submitted an exhaustive response wherein the petitioner rebutted the blind and non-speaking allegations as alleged

against him and also cited particular instances of deliberate vindictive approach of the respondents in the matter but respondent no. 6 vide his letter dated 27.12.2016 affirmed the order of cancellation.

6. Being aggrieved by the aforesaid letter dated 27.12.2016, the petitioner filed an appeal before respondent no. 3 on 27.01.2017. Subsequently, the appeal was heard on 20.11.2018 by respondent no. 3 and the matter was posted for 03.12.2018 for further arguments. However, all of a sudden, the petitioner received order dated 20.11.2018, as contained in Memo No. 5195 dated 22.11.2018 (Annexure-16), passed by respondent no. 3 on 25.11.2018, whereby the petitioner was informed that the appeal filed by him has been rejected and respondent no. 5 was directed to take possession of the plot immediately. Hence, this writ petition.

7. Learned counsel for the petitioner submits that the order dated 20.11.2018, whereby his appeal has been rejected has been passed on non est and perverse ground. From perusal of the rejection order, it is patently clear that the appeal has been rejected solely on the ground that the unit is non-functional, in contrary to the inspection which was conducted on 02.11.2018 by the Industries Department in which it has been categorically shown that the unit is running and photographs of the running unit was also taken. In the inspection conducted by IL & FS on 28.07.2015 under the scheme for integrated development of Food Processing Sector, the unit of the petitioner has been shown to be functional. He further submits that the petitioner's company has entered into a Contract Manufacturing Agreement dated 31.12.2018 with Gujarat Cooperative Milk Marketing Federation Limited for the manufacturing and supply of milk in the State of Bihar under the brand name 'Amul' where under the petitioner has to arrange for processing and packing facility with adequate manufacturing facilities and necessary labour personnel, plant machinery and facilities required for milk pasteurization, chilling, recombination, reconstitution, pouch packing, and cold storage as well as manufacturing of other fresh dairy products. The entire unit is being run and managed by the petitioner company and Amul does not have to do anything with the functioning of the unit. He lastly submits that the petitioner has been continuously running its factory since 2008 and several grants have also been released in favour of the petitioner by the Department of the Industries after conducting detailed inspection. Accordingly, he submits that the action taken by the respondent authorities smacks of oblique motive aimed to harass the petitioner under the garb of violation of the terms and conditions of the lease agreement.

8. A counter affidavit has been filed on behalf of respondent nos. 1 and 2 is on record in which it is stated that during site inspection by a committee, which was constituted pursuant to the direction of the Industries Department, Bihar, Patna, it was found that illegal construction has been made by the petitioner inside the premises. It is further stated that the machines were found installed on the land but they were not functional and operational. The boiler was shut down and it

was found that forty liters of milk was boiling in an utensil. It is also stated that taking into account the entire facts and circumstances of the matter, the BIADA, under the signature of its Managing Director, has rightly cancelled the allotment given to the petitioner.

9. A counter affidavit on behalf of respondent nos.3 to 5 is also on record in which almost the same submission and argument has been reiterated.

10. Mr. Naresh Dixit, learned counsel appearing on behalf of the BIADA, at the very outset, submits that the instant case is a glaring example of "suppressio veri suggestio falsi" as the petitioner has tried to twist various material facts. He further submits that the petitioner has made tall claim by saying that the factory was established in the year 2008 for manufacturing of milk, ghee, paneer, dahi, ice-cream and other milk related products. The unit has a daily production capacity of about 25000 liters of milk in addition to production of milk products but on the date of inspection no industrial activity was found. He further submits that after giving ample opportunity to the petitioner, the allotment of the petitioner was cancelled. He has harped upon the fact that at the time of inspection only 40 liters of milk was boiling in a pot, meaning thereby that there was no industrial activity.

11. Having heard learned counsel for the parties, in my view, the moot question involved in this writ petition is, whether the petitioner's company is operative and/or functional or not? In support of his submission, the petitioner has annexed various documents issued from time to time by the different Departments of the State. The petitioner's company was established in the year 2008 and since then it involves in manufacturing of milk, paneer, ghee, dahi, ice-cream and other milk related products with a capacity of about 25000 litres of milk. For this purpose, the petitioner's unit was allotted an industrial plot at Patliputra Industrial Area, Patna under registered lease agreement dated 01.02.2008. The petitioner's promoters, have commenced the dairy industrial activity in the year 2008.

12. It is not in dispute that the petitioner's company has entered into a Contract Manufacturing Agreement dated 31.12.2018 with Gujarat Cooperative Milk Marketing Federation Limited for the manufacturing and supply of milk in the State of Bihar under the brand name 'Amul' and the entire unit is being run and managed by the petitioner's company and Amul does not have to do anything with the functioning of the unit. The production of the aforesaid cooperative is marketed in the name & style of "Amul", the petitioner has been manufacturing/producing milk products in the State of Bihar. The non-performing unit of the petitioner has become a "performing unit". The petitioner company was sanctioned a one time settlement proposal by Bank of Baroda on 24.12.2019, the petitioner company repaid the OTS payment to the bank. The respondent BIADA, has admitted the same in para-31 of the supplementary counter affidavit filed in C.W.J.C. No. 5622 of 2020 and the same is not a disputed fact. It is also not in dispute that several grants have been released in favour of petitioner by the

Department of Industries after conducting thorough and detailed inspection. In fact, the Department of Industries (which is the parent body of BIADA) issued order dated 20.05.2020 (Annexure-20 to the writ petition) for conducting an inspection of the unit for the release of 4th installment of the subsidy. On the basis of such direction, a joint inspection was conducted on 01.06.2020 in which the unit of the petitioner has been found to be fully functional and operational.

13. The petitioner has also approached the State Investment Promotion Board (SIPB), Department of Industries, Government of Bihar, vide acknowledgment reference No.SIPB2009000196 dated 21.09.2020 (Annexure-23 to the writ petition) for single window clearance to establish the paneer manufacturing plant, enhancing its capacity, and invested an amount of Rs.5 crores for this purpose. The Bihar State Pollution Control Board has renewed the Emission Consent and Discharge Consent of the petitioner's company in the year 2018 itself (Annexure-17 series). It is needless to mention here that the Pollution Control Board would not grant consent orders to units which are shut down, as has been alleged by the BIADA. The Chief Inspector of Boilers, Bihar has tested/inspected the boiler installed in the premises and has renewed the certificate for use of boiler. Further, the Weights & Measures Department has also verified the weighing instruments installed in the factory and issued certificate dated 28.09.2019 (Annexure-26 to the writ petition). These are regular/routine inspection which are carried out for a running and functional unit. These facts clearly show that the industrial activity is being carried out by the petitioner in consonance with the terms and conditions of the Lease Deed dated 01.02.2008. Petitioner has also cleared all its loan liability with the Bank which also shows that it is a functional and running unit.

14. A coordinate Bench of this Court, after hearing the writ petition of the petitioner during the pandemic, vide order dated 12.05.2020 passed in C.W.J.C. No.5622 of 2020, has given a specific finding that the petitioner's company is a "performing unit" involved in the manufacturing of milk products which falls under the category of "Essential Services". The issuance of lockdown pass by BIADA itself shows and certifies that the unit is functional and running.

15. The submissions made on behalf of BIADA is mainly based on the various decisions rendered by the different coordinate Benches of this Court, in my considered opinion, are not applicable in the facts of the present case because after cancelling the lease deed, same plot has not been transferred to any other person or company, as from the discussions made herein above and the documents annexed by the petitioner clearly shows that the petitioner's company is running and functional one.

16. It is pertinent to mention here that to provide planned development of industrial area and promotion of industries in the State of Bihar the Legislatures of the State in the 25th year of the Republic enacted a law known as the Bihar Industrial Area Development Authority Act, 1974. The law envisaged setting up of an "Authority", which was conferred with the powers of providing amenities,

infrastructure, buildings etc. in industrial areas for which land was acquired by the State. The "Authority" was a body corporate and consists of a Chairman, a Managing Director and five other Directors to be appointed by the State Government. They are to hold office on the terms and conditions prescribed in this regard and at the pleasure of the State Government. The Authority shall be responsible for planning, development and maintenance of the Industrial Area and amenities thereto and allotment of land, execution of lease and cancellation of such allotment or lease, realization of fees rent charges and matters connected thereto. The Industrial Policy of the Bihar Government also provides that support and impetus would be given for the revival and rehabilitation of MSME units.

17. This Court is feeling inapt to understand that if more than three or four Departments of State are conducting inspection, issuing certificates and releasing subsidy but one Department of the State (BIADA) is submitting that the unit is non-functional and inoperative. Even a layman's answer must go in favour of the majority view.

18. I am conscious of the fact that the purpose of leasing the land was only to permit industries to come up and thereby to generate employment as well as to earn income to the State. It is a matter of record that several State and Central Public Sector undertakings have also been closed when such is the fluidity of situation, taking a stringent view that non establishment of industries must result in cancellation of lease cannot be countenanced. Instead, time ought to have been granted either to establish industries or to revive those which have become sick. In case, the existing industries have become unviable, the lessee can be permitted to go for diversification sudden or abrupt cancellation of leases would not only put the lessee, but also various agencies, as well as the employees to serious hardship.

19. The State Government repeatedly inviting entrepreneurs from all over the world to come and establish industry so that more and more employment could be generated and for this the State Government is always announcing different types of incentives to lure them. In this context, the State instrumentality are also expected to give them good and viable atmosphere so that they could come and establish their companies for betterment of the public at large and are not expected to create hurdles on one pretext or the other or on one pretence or the other. I do not want to say anything more.

20. Having heard the parties and pursuing the documents available on record, in my considered opinion, the petitioner is successful in his attempt in proving through various documents issued by the different Departments of the State that its unit is functional and operational one.

21. The order dated 20.11.2018, as contained in memo no. 5195 dated 22.11.2018 (Annexure-16), order dated 31.03.2016 (Annexure-8) and order dated 27.12.2016 (Annexure-12) are hereby quashed.

22. With the above observations and direction, this writ petition is allowed.