

(2023) 08 PAT CK 0058

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12208 Of 2016, 5012, 9026 Of 2017, 9297 Of 2021

M/S Shree Mahadevji Rice Mill Private Limited And Anr

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 16-08-2023

Acts Referred:

Citation : (2023) 08 PAT CK 0058

Hon'ble Judges : A. Abhishek Reddy, J

Bench : Single Bench

Advocate : Shashi Bhushan Kumar, Arti Kumari, Shailendra Kr. Dwivedi, Abbas Haider, Mrigank Mauli, Prince Kumar Mishra

Final Decision : Allowed

Judgement

1. Heard the learned counsels for the parties.

2. CWJC No. 12208 of 2016 has been filed for seeking the following reliefs:

"That the present application is being filed for issuance of appropriate writ/writs in the nature of mandamus directing the respondent authorities to release grant of Rs. 254.98 lacs i.e. 35% of total project cost in terms of scheme of Integrated Development of Food Processing Sector enunciated by Industries Department, Government of Bihar for establishment and promotion of industrial units and for any other relief or reliefs as the petitioner may be found to be entitled in the facts and circumstances of the case."

3. CWJC No. 5012 of 2017 has been filed for seeking the following reliefs:

"That the present application is being filed for issuance of appropriate writ/writs in the nature of mandamus directing the respondent authorities to release grant of Rs. 197.63 lacs i.e. 35% of total project cost in terms of scheme of Integrated Development of Food Processing Sector enunciated by Industries Department, Government of Bihar for establishment and promotion of industrial units and for

any other relief or reliefs as the petitioner may be found to be entitled in the facts and circumstances of the case.”

4. CWJC No. 9026 of 2017 has been filed for seeking the following reliefs:

“1. That by way of filing this writ petition the Petitioner craves the indulgence of this Hon'ble Court for grant of the following reliefs:-

a) For issuance of order/orders, direction/directions or writ/writs in the nature of mandamus directing the respondent authorities to grant the subsidy to the Petitioner Company in terms of Industrial Incentive Policy-2011 and Under the Scheme for Integrated Development of Food Processing Sector 2008 as amended vide Food Processing Policy (Amendment) 2014-15.

b) For issuance of an order/orders, direction/directions or writ/writs in the nature of mandamus directing the respondent authorities to hold the Project Approval and Monitoring Committee (PAMC) meeting and sanction the subsidy in terms of the policy of the government.

c) For any other relief which the Petitioner may be entitle.”

5. CWJC No. 9297 of 2021 has been filed for seeking the following reliefs:

“That the present application is being filed for issuance of appropriate writ/writs in the nature of mandamus directing the respondent authorities to release grant of Rs. 81.00 lacs i.e. 35% of total project cost in terms of scheme of Integrated Development of Food Processing Sector enunciated by Industries Department, Government of Bihar for establishment and promotion of industrial units and for any other relief or reliefs as the petitioner may be found to be entitled in the facts and circumstances of the case.”

6. Learned counsel for the petitioners have stated that the petitioners basing on the policy decision taken by the Government of Bihar, namely, Integrated Development of Food Processing Sector, 2008 vide Annexure-2 of CWJC No. 12208 of 2016, 5012 of 2017 and 9297 of 2021 and Annexure-P/2 of CWJC No. 9026 of 2017 have established Units. The necessary approval has been given by the State Investment Promotion Board (hereinafter referred to as “the S.I.P.B.”) on the application made by the petitioners on various dates i.e. 05.08.2013 (CWJC No. 12208 of 2016), 29.01.2015 (CWJC No. 5012 of 2017), 05.08.2015 (CWJC No. 9026 of 2017), 11.12.2014 (CWJC No. 9297 of 2021) but the authority concerned without taking into consideration the above has passed the impugned order.

7. Learned counsel for the petitioners has stated that the authority concerned without taking into consideration the above approval given by the S.I.P.B. has rejected the case of the petitioners on the ground that the proposals have not been approved by the concerned Chief Minister.

8. Learned counsel for the petitioners has stated that as per the new policy of the Government of Bihar the approval of Hon'ble the Chief Minister is necessary

but in so far as the petitioners' case is concerned, the same falls under the old policy of the year, 2008 for which the approval of Hon'ble the Chief Minister is not necessary and the approval of the S.I.P.B. is sufficient and same has been given by the said authority.

9. Learned counsel for the petitioners has relied on the judgment passed by a Division Bench of this Hon'ble Court in C.W.J.C. No. 4051 of 2021 dated 10.08.2022 along with its analogous case, wherein this Hon'ble Court while dealing with the similar issue as in the present case has allowed the said writ petition and the S.L.P. filed against the said order has also been dismissed by the Hon'ble Supreme Court.

10. Learned counsel for the petitioners has taken this Court through the order passed by this Hon'ble Court in C.W.J.C. No. 4051 of 2021 along with its analogous case dated 10.08.2022 most specifically the issue that was framed by the Division Bench to buttress his case and prayed this Court to allow the writ petitions.

11. Per contra, learned counsel appearing on behalf of the respondents while trying to defend the order passed by the authority which is impugned in the present writ petition has not disputed the judgement of this Hon'ble Court passed in C.W.J.C. No. 4051 of 2021 (supra) and subsequent dismissal of the S.L.P. The learned counsel has also not denied the fact that the industries of the petitioners were started before the advent of 2016 policy and that the petitioners have applied for approval, which was granted in the years i.e. 2013 (CWJC No. 12208 of 2016), 2015 (CWJC No. 5012 of 2017), 2015 (CWJC No. 9026 of 2017), 2014 (CWJC No. 9297 of 2021) itself and necessary approvals were also granted by the S.I.P.B under the old policy.

12. On perusal of the impugned order, it shows that the authority concerned has rejected the case of the petitioners solely on the ground that the 2016 policy requires the approval of Hon'ble the Chief Minister and that there was no approval of Hon'ble the Chief Minister so far as the petitioners' industries are concerned. The authority has not bothered to verify as to when the industry has been started, admittedly in the present case the S.I.P.B. approval was of the year 2013 which is much before the 2016 policy was introduced.

13. The Division Bench of this Hon'ble Court in paragraphs no. 30(v), 47, 50, 51 & 52 of the judgement dated 10.08.2022 passed in C.W.J.C. No. 4051 of 2021 (M/s Leoline Foods Private Limited Vs. The State of Bihar & Ors.) along with its analogous case has held as follows:-

30(v) "Whether it is permissible for the State of Bihar to deny the petitioner the benefits under Bihar Industrial Incentive Policy, 2011 on the plea that they failed to process the papers for obtaining the necessary approval of the Chief Minister to the Minister of Industries".

(47) "In view of this settled legal principle reiterated by the Supreme Court as

noted above, we are of the considered opinion that it was impermissible for the Respondent-State of Bihar to deny the original claims of the petitioner in terms of subsidies/incentives under Bihar Industrial Incentive Policy, 2011 on the basis of pendency of the matter before it. All such grounds taken on behalf of the State of Bihar for denying the petitioner's claim are hereby rejected".

(50) The approach of the State Respondents in denying the petitioner the benefit of incentive/subsidy under Bihar Industrial Incentive Policy, 2011, in the facts and circumstances noted above, is wholly unjustified, arbitrary and hit by the doctrine of promissory estoppel.

(51) Having stated thus, we revert to answer the issues formulated in paragraph 30, which are determined as under:

(i) The petitioner's unit is covered by the Bihar Industrial Incentive Policy, 2011 read with the Food Processing Scheme of the State Government issued vide Memo No. 6699 dated 3.08.2008 and the scheme for the integrated development of the food processing sector;

(ii) and (iii) By operation of Clause 8 of the Bihar Industrial Incentive Policy, 2016, the incentives, which were available for the eligible units under the Bihar Industrial Incentive Policy cannot be taken away if such units had valid approval of the S.I.P.B. and they came in commercial production by 31.03.2017.

(iv) The Division Bench decision in the case of M/s Sunny Stars Hotels Pvt. Ltd. Cannot be said to be inapplicable to the controversy at hand. The stand which has been taken on behalf of the State of Bihar that the approval granted by the S.I.P.B. was conditional to denying the benefits of incentives/ subsidy / exemptions is untenable in the facts and circumstances, as discussed hereinabove;

(v) The answer to the fifth issue framed in paragraph 28 of the writ petition is negative. The State Government cannot be permitted to derive advantage of its own folly.

(52) In view of the aforesaid discussions in our opinion, these applications deserve to be allowed with a direction to the State Respondents to allow the petitioner benefits of all the incentives under Bihar Industrial Incentive Policy, 2011. We hold that the petitioner is entitled to subsidy/incentives under Bihar Industrial Incentive Policy, 2011. The respondents are directed to ensure that the petitioner's actual entitlements for grant of incentives/subsidies under Bihar Industrial Incentive Policy, 2011 are considered, determined and granted to it within a maximum period of three months from the date of receipt/production of a copy of this order."

14. The above judgement of this Hon'ble Court has already been upheld by the Hon'ble Supreme Court and therefore the decision of the Division Bench of this Court is not only binding on this Court but also on the authority.

15. Having regard to the same, the writ petitions are allowed setting aside the impugned order passed by the authority concerned. The petitioners are entitled to subsidy/incentives under Integrated Development of Food Processing Sector. The respondents are directed to ensure that the petitioners' actual entitlements for grant of incentives/subsidies under Integrated Development of Food Processing Sector are considered, determined and granted to it within a maximum period of three months from the date of receipt/production of a copy of this order.