

(2020) 02 PAT CK 0321

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1179 Of 2020

Sai Industries

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Citation : (2020) 02 PAT CK 0321

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Brisketu Sharan Pandey, Subhash Pd. Singh

Final Decision : Allowed

Judgement

1. The present writ petition has been filed, seeking the following reliefs :-

"(i) For issuing appropriate writ including writ of certiorari and thereby quashing order dated 27.08.2018 issued by the respondent no. 2 whereby and whereunder the claim of the petitioner for Capital Subsidy has been rejected.

(ii) For direction to the respondent authority to pay the amount of Capital Subsidy Rs. 30.44 lakhs to the petitioner under Bihar Industrial Incentive Policy, 2011.

(iii) For grant of Capital Subsidy on purchase of an installation of Plant and Machinery, as specified in Col. 1 & 2 as pre-condition incentive and post-production incentive of Bihar Industrial Incentive Policy- 2011."

2. The short submission for consideration, advanced by the learned counsel for the petitioner is that vide Annexure-2 to the writ petition, the petitioner-Unit has been granted approval by the S.I.P.B. in its meeting held on 17.07.2014, however the Principal Secretary, Industries Department, Government of Bihar, Patna by the impugned order dated 31.08.2018 has rejected the case of the petitioner for grant of Capital Subsidy on the ground that after the recommendation/ consent of the S.I.P.B., approval has not been granted by the

competent authority. In this regard, the learned counsel for the petitioner has referred to a judgment rendered by the learned Division Bench of this Court dated 29.07.2019 passed in CWJC no. 12104 of 2018 (M/s Sunny Stars Hotels Private Limited v. the State of Bihar and others), relevant paragraphs whereof, are reproduced hereinbelow :-

"The exhaustive discussions that I have made above would lead to the following irresistible conclusions:

(a) The rejection of the case of the petitioners vide letter dated 13.10.2017 impugned at Annexure 19 to CWJC No.12104 of 2018, the order dated 26.06.2018/31.10.2017 impugned at Annexure 15 series to CWJC No.15496 of 2018 and 13.10.2017 impugned at Annexure R/1A to the counter affidavit in CWJC No.2981 of 2019 of the Director, Industries simply because the proposal does not have the approval of the Competent Authority in terms of the resolution dated 16.01.2006, is a whimsical decision, lacking application of mind and bereft of reasons.

(b) In absence of the term 'Competent Authority' defined under the 'Industrial Policy, 2011', the approval granted by the State Investment Promotion Board, accepted by the concerned department in terms of Clause 14 of the 'Industrial Policy, 2011' and acted thereupon, there is no requirement of further approval by any other authority.

(c) In absence of any provision present in the 'Industrial Policy, 2011', to require the eligibility proposal of any unit to be placed before the Chief Minister or the Cabinet, the explanation given by the Industries department at paragraphs 10 to 13 of the counter affidavit filed in CWJC No.12104 of 2018, to justify his illegal act, is de-hors the 'Industrial Policy, 2011'.

(d) In view of the definition of 'Competent Authority' present in the 'Act of 2006 at Annexure P/3 to CWJC No.2981 of 2019 the approval granted by the State Investment Board and acted upon by the concerned department in terms of Clause 14 for extending incentives to 2 of the 3 petitioners under the 'Industrial Policy, 2011', is a valid approval, not open to interference by any other authority on any ground, except eligibility and which is not an issue for the denial of the benefits.

(e) In absence of doubts raised against the petitioners on their eligibility to draw incentives under the 'Industrial Policy, 2011', the orders impugned in the respective writ petitions to deny them the incentives is illegal?

(f) The State having made a promise under the 'Industrial Policy, 2011' to extend the incentive benefits to the budding industrialist, that the petitioners acting on the promise have made investment and fulfilled the criteria for drawing the incentives, the respondent-State cannot deny the incentives on the principles of 'promissory estoppel' as laid down in the judgments relied upon including the one rendered in the case of M/s Suprabhat Steel Ltd. (supra).

For the reasons and discussions above and while quashing the order dated 13.10.2017 impugned at Annexure 19 to CWJC No.12104 of 2018, the order dated 26.06.2018/31.10.2017 impugned at Annexure 15 series and the order dated 13.10.2017 impugned at Annexure R/1A to the counter affidavit in CWJC No.2981 of 2019 in so far as it proceeds to reject the incentives admissible to the petitioners under the 'Industrial Policy, 2011', we hereby direct the State Government in its Industries department and the Commercial Taxes department to ensure that every incentive to which the 3 petitioners are found entitled under the 'Industrial Policy, 2011' shall be accorded to them within a maximum period of 3 months from today without either raising technicalities of approval or on the issue of change in payment procedure as raised by the Commercial Taxes department for in my opinion, the two arms of the State Government have to act within the stipulation present in 'Industrial Policy, 2011' for according benefits to these petitioners and not allow to these petitioners to either run around the corridors of the respective department or to approach this Court again specially where their admissibility to the incentives is not in question.

The writ petition is allowed with the directions above."

3. The learned counsel for the petitioner has submitted that it is apparent from the aforesaid judgment rendered by the learned Division Bench of this Court and affirmed the Hon'ble Apex Court, that once the State Investment Board (S.I.P.B.) grants approval, there is no requirement of any further approval by any other authority, much less the competent authority, hence the order impugned dated 31.08.2018 is contrary to the principles enunciated by the learned Division Bench of this Court in the case of (M/s Sunny Stars Hotels Private Limited (supra)).

4. The learned counsel for the State has got no quarrel in law.

5. Having regard to the facts and circumstances of the case, considering the submissions advanced by the learned counsel for the parties as also taking into account, the judgment rendered by the learned Division Bench in the case of (M/s Sunny Stars Hotels Private Limited (supra)), I deem it fit and appropriate to quash the impugned order dated 31.08.2018, passed by the Principal Secretary, Industries Department, Government of Bihar, Patna, being contrary to the principles laid down by the learned Division Bench in the case of (M/s Sunny Stars Hotels Private Limited (supra)). Consequently, the State Government in its Industries Department and the Commercial Taxes Department are directed to accord the incentives to the petitioner, as per its entitlement under the Bihar Industrial Incentive Policy-2011, within a period of 03 months from today.

6. The writ petition stands allowed.