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**(2000) 03 PAT CK 0117**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 8139 of 1996**

Shree Durga Iron Mill

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 06-03-2000

**Acts Referred:**

**Citation :** (2000) 2 BLJR 1271 : (2000) 2 PLJR 761 : (2000) 2 PLJR 760

**Hon'ble Judges :** S.K. Katriar, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

S.K. Katriar, J.—This Writ Petition has been preferred with the prayer to issue a writ in the nature of mandamus, commanding the respondents to sanction and disburse the amount of capital investment subsidy in accordance with the Industrial Policy No. 13730, dated 1.9.1986, amounting to Rs. 3,41,850/-. During the pendency of this Writ Petition, and on account of the order dated 5.5.1998 of this Court, a sum of Rs. 1,91,250/- has already been sanctioned and disbursed and therefore, this Writ Petition now survives for the balance amount of Rs. 1,50,600/-along with consequential reliefs.

2. The petitioner is a partnership firm and is represented before this Court through one of its partners. It set up a Rerolling Iron Mill at Baidyanathpur, Deoghar, District Deoghar, and for which respondent No. 5, the Bihar State Financial Corporation (hereinafter referred to as "the Corporation"), had sanctioned and disbursed a sum of Rs. 22.80 lacs to the petitioner as term loan. The State Government, in the Department of Industries, issued an industrial policy, being Resolution dated 1.4.1986 (Annexure-1), to help the entrepreneurs in setting up industries in the State of Bihar by granting concessions and incentives. The admitted position is that paragraph 5(b) of the Industrial Policy is applicable to the facts and circumstances of the present case which is set out here in below for the facility of quick reference:

5(b) Category "B" districts (Central Capital Subsidy). - In this category are eleven districts viz., Bhagalpur, Darbhanga, Madhubani, Samastipur, East Champaran, West Champaran, Palamau, Dumka, Deoghar, Sahebganj and Godda. In these districts, Central Capital Investment subsidy at the rate of 15 per cent is admissible to an industrial unit subject, to a maximum of Rs. 15 lakh.

3. The petitioner had submitted its application dated 5.2.1998, to the State-Level Committee (hereinafter referred to as "the S.L.C."), for release of the capital subsidy, the S.L.C. is presided over by the Director of Industries, and includes representation of the Corporation, the Bihar State Industries Development Corporation, etc. This application was considered by the S.L.C. at its meeting held on 29.7.1988 and sanctioned a sum of Rs. 1,91,250/- to the petitioner which was to be disbursed through the Corporation and was to be adjusted against the aforesaid term loan paid by the Corporation to the petitioner. Though this sum had been sanctioned on the date of institution of the Writ Petition, but had not been released to the Corporation for adjustment. Accordingly, this Court had passed orders on 5.5.1998 on this Writ Petition directing the State Government to release the said sum of Rs. 1,91,250/- to be adjusted against the Corporation term loan. Let it be recorded that this amount had been sanctioned by the S.L.C. on 29.7.1988, but was actually released under the orders of this Court towards the end of August 1998. The petitioner, therefore, prays that the Corporation should be restrained from realising interest on the term loan to the extent of Rs. 1,91,250/- for the period 29.7.1988 to 31.8.1998.

4. There also remains for consideration of this Court the disbursement of the balance sum of Rs. 1,50,600/- which has not till date been paid. According to the petitioner, it had submitted its application, dated 5.8.1988 (Annexure 3) before the S.L.C., and the amount has not been sanctioned till date. In the submission of the learned Counsel for the petitioner, he had submitted his application dated 5.8.1988 (Annexure 3) for the balance sum and given the requisite time for processing and decision making, the Corporation should be restrained from releasing interest on the its term loan to the extent of Rs. 1,50,600 with effect from 1.10.1988 till the date of adjustment of the said amount.

5. Learned Counsel for the petitioner has submitted that according to the Scheme, the relevant paragraph of which has been set out hereinabove, the petitioner is entitled to 15 per cent of its investment. The same was to be released on the basis of the recommendation of the Corporation which is to be found in its letter dated 6.8.1988 (Annexure 4), according to which the petitioner had invested a sum of Rs. 22.14 lacs, 15 per cent of which is Rs. 3,32,100/-. Since a sum of Rs. 1,91,250/- has already been disbursed, the State Government should be commanded to release the balance sum of Rs. 1,50,600/-.

5.1. The State Government has in paragraph 7 of its counter-affidavit acknowledged in substance the contents of the Corporation's aforesaid letter dated 6.8.1988 (Annexure 4), namely, Rs. 22.14 lacs being the total project cost, the Corporation had recommended for release of a sum of Rs. 3,41,850/-

towards the Central Capital subsidy. However, the S.L.C. at its meeting held on 29.7.1998 has disallowed certain items of investment for purposes of computation of the capital subsidy, as a result of which the project cost for the present purpose comes to Rs. 12.75 lacs, and 15 per cent of the same comes to Rs. 1,91,250/- which has already been disbursed. Paragraph 8 of the counter-affidavit is set out hereinbelow for the facility of quick reference:

8. That it is further stated and submitted that the claim of the petitioner unit was placed in the State-Level Committee meeting held on 29.7.1988 and after examining the total records, the committee sanctioned a sum of Rs. 1,91,250/- on the project cost of Rs. 12.75 lacs on 20.11.1989, the break-up of all the calculation made by the State-Level Committee, is as under:

Project cost issued in lacs,

(i.e. the amount of investment

approved by BSFC vide

|                |                 |              |     |      |                       |       |      |           |      |      |                     |      |      |                   |      |     |                 |      |     |       |       |        |       |       |       |
|----------------|-----------------|--------------|-----|------|-----------------------|-------|------|-----------|------|------|---------------------|------|------|-------------------|------|-----|-----------------|------|-----|-------|-------|--------|-------|-------|-------|
| Annexure "4"). | Sanction by SLC | (a) Building | 5.8 | 4.91 | (b) Plant & Machinery | 12.24 | 6.10 | (c) Tools | 0.10 | 0.10 | (d) Electrification | 1.71 | 1.64 | (e) Miscellaneous | 1.00 | --- | (f) Contingency | 1.29 | --- | _____ | _____ | Total: | 22.14 | 12.75 | _____ |
|----------------|-----------------|--------------|-----|------|-----------------------|-------|------|-----------|------|------|---------------------|------|------|-------------------|------|-----|-----------------|------|-----|-------|-------|--------|-------|-------|-------|

Further it is made clear that Rs. 82,000/- was deducted by the Bihar State Food Corporation of excess expenditure made upon building and also Rs. 24,150/- upon excess for the D.G. Sets. At the same time, it is being clarified that no contingency and miscellaneous is admissible to the petitioner and as such the project cost was calculated to be Rs. 12.75 lacs, and as such the petitioner has been paid whatever was due to them towards subsidy.

5.2. Having considered the rival submissions on this issue, I hereby reject the contention of respondent Nos. 1 to 4. Neither the counter-affidavit, nor the learned Government Pleader during the course of oral arguments, is able to satisfy this Court as to why certain items of investment were either truncated or completely deleted for the purpose of computation. I am unable to appreciate, for example, why the investment under the head "Building" has been reduced from 5.8 lacs to 4.91 lacs or that the investment under the head "Plant & Machinery" has been reduced from 12.24 lacs to 6.10 lacs. I am equally unable to appreciate as to why the investments under the head "Miscellaneous and Contingency" have been completely deleted. The aforesaid statement in paragraph 8 of the counter-affidavit seeks to clarify with respect to the reduction under the head "Building" that the same was reduced by 82,000 because of excess expenditure made upon "Building". In spite of repeated queries to the Government Counsel, he is unable to satisfy the Court as to the justification for deducting the said expenses by 82,000. The Statement made in the counter-affidavit is vague and nebulous. It is all the more intriguing that, as is manifest from the last column of the Corporation's aforesaid letter dated 6.8.1998

(Annexure 4), that the sum of Rs. 82,000/- has already been deducted by the Corporation under the head "Building". It thus appears to the Court that deduction of Rs. 82,000/- by the State Government is not only unjustified, but seems to be done twice over. Similarly, the expenditure of Rs. 24,150/- on the D.G. Sets has been disallowed for undisclosed reasons. It is intriguing to notice that in the aforesaid letter dated 6.8.1998 (Annexure 4), the Corporation had itself deleted the said sum of Rs. 24,150/- for purposes of computation. This Court is, therefore, unable to uphold the said deduction and that too for the second time. As to the expenses under the head "Contingency" amounting to Rs. 1.29 lacs, sufficient justification for its inclusion has been indicated in the Corporation's aforesaid recommendation dated 6.8.1998 (Annexure 4), namely, being the overrun expenditure on Building, Plant & Machinery, but the State Government has not provided reasons in the counter-affidavit, nor during the course of oral arguments, for deleting the same for the purpose of computation. The contention of the State Government is, therefore, rejected, and it is accordingly held that Rs. 22.14 lakhs should have taken by the SLC to be the project cost for the purpose of computation.

6. Mr. P.K. Sahi appearing for the respondent-corporation submits that the recommendations made in the aforesaid letter dated 6-8-1988 (Annexure 4) were properly arrived, were made after a thoughtful consideration of the entire matter. In other words, the corporation stands by its appraisal and recommendation.

7. Learned Government Pleader appearing for respondents 1 to 4 has submitted that the Writ Petition raises disputed questions of facts and\* therefore, this Writ petition is fit to be dismissed on that ground. I am unable to accede to the contention, inasmuch as the Writ Petition does not involve determination of disputed questions of facts. Those of the issues raised in a writ petition which can be disposed of on the basis of affidavit evidence do not involve determination of disputed questions of facts. In the present case, all the facts are admitted, and the only question to be determined in this writ petition is as to what has been the basis and the justification for the SLC to exclude certain items of investment for purposes of computation. The State Government has neither given even semblance of a justification in its counter-affidavit, nor has the learned Government Pleader been able to address this Court at all on the question, and instead the Court has only been informed of the decision of the S.L.C., as stated in paragraph 8 of the counter-affidavit hereinabove. I have, therefore, no doubt in my mind that the present case is squarely covered by the judgment dated 13.1.2000, passed by me in C.W.J.C. No. 11952 of 1996 *Hindeutsch Impex Pvt. Ltd. v. The State of Bihar* paragraph 9.1 of which is relevant in the present context and is set out hereinbelow for the facility of quick reference:

9.1. This Court expresses its strong displeasure on the approach of the respondent-authorities in confronting this Court with their conclusion, rather than making a sincere effort to justify their action by placing full materials before the

Court, enabling the Court to reach its own conclusions. Reference may be made to the judgments reported in 1973 (2) SLR 659 Prem Parveen v. Union of India, as well as 1980 (1) SLR 788 P.C. Saxena v. State of M.P.. This Court, is thus, not convinced about the mode and manner in which the respondent-authorities have reached the conclusion which is unsupported by cogent logic. In fact, the Court gets an impression that the respondent-authorities were in an undue anxiety to reject the petitioner's claim, providing only an apology for reasoning for the reason that it was faced with the order dated 19.1.96 of this Court (Annexure 15).

8. Learned Government Pleader next submits that the Scheme in question was operative only up to 13.9.1988, and was thereafter terminated. He relies on the letter dated 22.9.1988 (Annexure-A to the counter-affidavit). Learned Counsel for the petitioner contradicts the position, and submits that the stand taken by the respondent Nos. 1 to 4 is completely belied by a plain reading of the said letter. He rightly submits that the scheme was discontinued w.e.f. 1.10.1988 with respect to non-manufacturing activities like cold storage, tailoring, dry-cleaning, and a host of such other activities mentioned therein. It does not cover a manufacturing unit like the one in question. Paragraph 8 of the same clearly states that the Central investment subsidy in question shall continue to be available to manufacturing units, hotel management, and small-scale services such as repairing and maintenance units and workshop. I, therefore, reject the contention of the learned Government Pleader that the scheme was discontinued with respect to manufacturing units like the petitioner, and hold the same continued with respect to manufacturing units like the petitioner.

9. This takes me on to the question of interest. Learned Counsel for the petitioner rightly submits that the respondent-Corporation should be restrained from charging interest on its term loan account to the extent of Rs. 1,91,250/-, for the period 29.7.1988 to 31.8.1998, and one sum of Rs. 1,50,600, from 1.10.1988 till the date of disbursement of the State Government, He rightly relies on the aforesaid judgment dated 13.1.2000, passed by me in C.W.J.C. No. 11952 of 1996 (supra), paragraph 12 of which is relevant in the present contest and is set out hereinbelow for the facility of quick reference;

12. Counsel for the petitioner has next submitted that respondent No. 5 should be restrained from charging interest on the loan amount to the extent of delayed payment of the interest subsidy. In this submission the aforesaid, sum of Rs. 7,74,300 should be adjusted against the loan amount from the date the former became due to the petitioner, and no interest to that extent should be charged by respondent No. 5. The contention is correct and is hereby quashed. This proposition is correct and is hereby upheld. This proposition is covered by a Division Bench judgment of this Court dated 31.12.99 (Annexure 12), passed in C.W.J.C. No. 71 of 1991 (R) Om Flour Mills (P) Ltd. v. State of Bihar and Ors.

Ther aforesaid Division Bench judgment of this Court in C.W.J.C. No. 71 of 1991 (R) Om Flour Mills (P) Ltd. v. State of Bihar and Ors. is reported in 1992 (1) PLJR

700.

It is, therefore, ordered that, the Corporation shall not charge interest on its term loan account to the extent of Rs. 1,91,250/- for the period 29.7.1988 to 31.8.1998, and on a sum of Rs. 1,50,600/-, for the period 1.10.1988 till the date of disbursement. It goes without saying that the Corporation is entitled to realize its loss byway of deprivation of interest from the State Government, the State Government is accordingly directed to release the amount of interest to the Corporation.

10. In the result, this Writ Petition is allowed. The State Government is hereby directed to release a sum of Rs. 1,50,600/- to the Corporation to be adjusted against the Corporation's term loan to the petitioner. The respondent-Corporation is hereby restrained from realising interest from the petitioner to the extent indicated hereinabove, and the State Government shall release the amount of interest to the Corporation along with balance sum of Rs. 1,50,600/-