

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6571 of 2023

M/s ACE Infra and Security Pvt. Ltd., A Company registered under Companies Act having its Office at Ranjan Path, R.P.S. More, West Bailey Road, Danapur, District- Patna, through its authorized representative- Anirudh Priya, aged about 42 years (Male), Son of Ashok Kumar Gupta, Resident of Ranjan Path, Opposite R.P.S. More, Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industry, Government of Bihar, Patna.
3. The State Investment Promotion Board, Vikash Bhawan, Patna through its Secretary.
4. Director, Industries, Department of Industry, Government of Bihar, Patna.
5. The Director (Technical Development), Department of Industry, Government of Bihar.
6. The General Manager, District Industries Centre, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 08-09-2023

I.A. No. 02 of 2023.

I.A. No. 02 of 2023 is allowed.

The present writ petition is filed for the following relief(s):-

“i. For issuing a writ of certiorari or any other appropriate writ setting aside the email dated 05.11.2022 and the attachment therein whereby and whereunder the claim of the petitioner under the Bihar Industrial Incentive Policy 2011 has been rejected on the ground that the proposal of the petitioner was



accepted by the State Investment Promotion Board after the date of commercial production of the unit.

ii. For issuing writ of certiorari or any other appropriate writ setting aside the letter dated 23.11.2017 bearing Memo No.3573 (to the extent it relates to the petitioner) whereby and whereunder the claim of the petitioner under the Bihar Industrial Incentive Policy 2011 had been rejected on the ground of proposal of the petitioner not having approval of the competent authority.

iii. For issuing writ of mandamus directing the respondents to pay the petitioner its entitlement under the head of subsidy for capital investment in plants and machinery, subsidy for in DG sets, subsidy/exemption from stamp duty/registration fees on land, reimbursement for monthly minimum charges/demand charge under the Bihar Industrial Incentive Policy, 2011.

iv. For holding that once the proposal of the investment has been accepted and petitioner is declared entitled under the Policy then the Respondents cannot interfere with the disbursal of the subsidy amount to the Petitioner.

v. For holding that the Respondents erred by not releasing subsidy amount given the fact that they hold no authority to refuse/stop/interfere, once proposal of investment has been accepted by the State Investment Promotion Board (SIPB).

vi. For holding that the Respondents cannot make the Petitioner run



from pillar to post for subsidy once it is found entitled.

vii. For any reliefs, direction/directions for which the petitioner is entitled may be given.”

2. Learned counsel for the petitioner has stated that the impugned order is passed by the authority concerned solely on the ground that the petitioner has started production even before the approval has been granted by the State Investment Promotion Board (SIPB).

3. Learned counsel has stated that under the Bihar Industrial Incentive Policy, 2011, the petitioner's entitlement for re-imbusement of capital subsidy was denied on the ground that the petitioner has started commercial production even before the approval by SIPB and the authorities have rejected the case of the petitioner.

4. Learned counsel has stated that there is nothing under the regulation which states that the approval of the SIPB is a condition precedent for starting the commercial production. That the stand taken by the authorities is not only arbitrary, bad and illegal but also contrary to the scheme floated by the State of Bihar under the Bihar Industrial Incentive Policy, 2011, and therefore, prayed this Hon'ble Court to allow the present writ petition and



give a direction to the authorities concerned for granting the incentives under the Bihar Industrial Incentives policy, 2011.

5. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the prayer of this writ petition and has stated that the petitioner has violated the terms and conditions of the policy.

6. Learned counsel has stated that the petitioner has not taken prior approval of the SIPB before starting the production. The act of the petitioner in starting the production even before the approval was granted is in violation of the incentive policy, and therefore, the petitioner is not entitled to any incentive as envisaged under the Incentive Policy, 2011. Further, it is stated under similar circumstances the authorities have rejected the case of *M/s Jagaran Prakash Limited, Gaya* after taking the opinion of the Law Department and, therefore, the petitioner's case which is also similar has also been rejected. Learned counsel for the respondents has prayed to dismiss the present writ petition.

7. Admittedly, in the present case, the State of Bihar has floated Bihar Industrial Incentive Policy, 2011 to attract investments in the State. The petitioner, admittedly, has applied to the Competent Authority i.e. SIPB and was granted approval on 30.06.2015 and as per the said policy, the petitioner is entitled for



re-reimbursement of capital subsidy. But, the case of the petitioner has been rejected on the sole ground that the petitioner has started commercial production even before the grant of approval by SIPB. The said stand taken by the official respondents appears to be arbitrary and frivolous one. Admittedly, the authorities have invited investors/industrialists to invest in the State of Bihar by floating the Bihar Industrial Incentive Policy, 2011 and under the scheme some incentives have being offered to the Businessmen who have established their industries. The stand taken by the respondents that the petitioner has started production even before the grant of approval is without any legal basis. The policy does not lay any guidelines or restrictions on the industrialists that the production cannot be started before the approval by SIPB is granted and does not state that any person who starts production without getting the necessary approvals from SIPB is disentitled to the incentives under the scheme. As per the policy floated by the Government under the heading.

“Incentives to be provided to industrial units of the state to speed up industrial growth and investment in Bihar.

1. Pre-Production Incentives

Stamp duty and Registration Fees



(a) 100% exemption from the Stamp Duty / Registration Fees being levied on Lease/ Sale / Transfer of Industrial Land/Shed as also there outside the jurisdiction of Industrial Area Development Authority for new Micro, Small, Medium (MSME) and Large sector industries.

This exemption from Stamp Duty and Registration Fees facility will be granted only for the first time and will not be applicable in subsequent stages of Lease/ Sale / Transfer. This incentive will be available to new units only.

(b) Such existing Industrial Units which have undertaken expansion or diversification thereby leading to an increase of 50% in their production capacity, will also be entitled for the above incentive, only on to the extent of additional land required for Expansion.

(c) If, for any reason, the above incentive is not availed by the unit and the land is purchased, the above Stamp Duty and Registration Fees will be reimbursement by the department to such units at the post production stage.

2. The following incentives would be given to Industrial Units after commencement of Commercial Production under the New Industrial Incentive Policy.

(i) Post-Production Incentives



under the present policy, incentives like Project Report Incentive, Incentives on land/shed, financial assistance for acquiring Technical Know-How, Capital Subsidy etc. will be available. The upper limit for such reimbursement will be Rs. 600 lacs (Six hundred lacs). This will be excluding the subsidy on Captive Power General/Diesel Generating set. The incentives specified under Para 2 are as under:-

(ii).....

(iii).....

(iv).....

(v).....

(vi).....

(vii) Capital Subsidy

a. New MSME industrial units will be granted 20% capital subsidy on the amount spent on plant and machinery subject to a maximum of Rs. 75 lacs (seventy five lacs).

b. New large industrial units will be granted 20% capital subsidy on the amount spent on plant and machinery subject to a maximum of Rs. 500 lacs (five hundred lacs).

c. Above Capital Subsidy will be available to such industries which will come into commercial production after the effective date of this policy and the capital subsidy will be available only on the capital investment made on Plant &



Machinery by such industries. This facility will be available only after the commercial production of the industrial unit.

d. Since food processing sector units are already entitled for capital subsidy under food processing policy, therefore such units will not be entitled for above capital subsidy under this policy.”

8. As seen from the scheme there is no embargo for starting the production prior to the approval by SIPB. Admittedly in the present case, the approval was granted on 30.06.2015 and it is the case of the respondents that the commercial production has started on 08.08.2014, merely because the production has started before the approval by SIPB the incentive under the scheme cannot be disallowed. Moreover, the resolution dated 15.07.2011 (Annexure P-10) Clause 2 reveals that the inspection of the unit will be done by the authorities for extending the benefits of the scheme, which makes it abundantly clear that the unit has to be in production at the time of inspection.

9. Having regard to the above made submissions, this Court does not find any valid reasons for upholding the impugned order passed by the authorities and the same is set aside. The authorities are directed to grant the capital subsidy as envisaged under the Bihar Industrial Incentive Policy, 2011 and



make necessary payments to the petitioner as per the entitlement within a period of three months from the date of receipt of the copy of this order.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.09.2023.
Transmission Date	N/A

