IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16164 of 2022

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M/s Responce Renewable Energy Limited a Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at 76, Pandit Purushottam Roy Street, 3rd floor, Kilkata - 700007, West Bengal, through its General Manager namely Sant Prasad, (Male), aged about 45 years, son of Sri Dudh Nath Tiwari, Resident of Baramudi, P.S. Baramudi, District - Dhanbad (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Patna.
2. The Principal Secretary, Department of Industry, Government of Bihar, Patna.
3. The Director of Industries, Department of Industry, Government of Bihar, Patna.
4. The Deputy Director (Technical), Department of Industries, Government of Bihar, Patna.
5. The General Manager, District Industry Centre, Patna.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 16335 of 2022

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M/s. Glatt Solution (P) Limited, A Private Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at 76, Pandit Purshottam Roy Street, 3rd Floor, Kolkata- 700007 through its General Manager namely Sant Prasad, (Male), aged about 45 years, Son of Sri Dudh Nath Tiwari, Resident of Baramudi, P.S.- Baramudi, District- Dhanbad (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Industry, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
2. The Principal Secretary, Department of Industry, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
3. The Director of Industries, Department of Industry, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
4. The Deputy Director (Technical), Department of Industries, Government of Bihar, Vikash Bhawan, Baily Road, Patna.
5. The General Manager, District Industry Centre, Patna.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 16164 of 2022)
For the Petitioner/s : Mr. Nikhil Kumar Agarwal
Ms. Aditi Hansaria
Mr. Keshav Bhardwaj
For the Respondent/s : Mr.Abbas Haider, SC 6
Mr. Wasi Mohammad, AC to SC 6
(In Civil Writ Jurisdiction Case No. 16335 of 2022)
For the Petitioner/s : Mr.Nikhil Kumar Agarwal
Ms. Aditi Hansaria
Mr. Keshav Bhardwaj
For the Respondent/s : Mr.Kinkar Kumar, SC 9
Ms. Vagisha Pragya Vacaknavi, AC to SC 9
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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 09-02-2026

The petitioners are the companies engaged in the generation of solar power and have filed the present writ applications for quashing of the orders, dated 12.09.2022 and 26.09.2022, issued vide Memo Nos. SIPB/906 and SIPB/114, respectively, by the respondent-Director of Industries, Bihar and for a direction to the respondents to reimburse the interest subsidy of 2 per cent on the term loan of rupees 49.92 crores and 16.50 crores, respectively. The petitioners have further prayed for a declaration that the companies are entitled for the interest subsidy from the date of commercial production, i.e. 30.03.2017 and 28.02.2017 respectively till seven years, as provided under the Industrial Incentive (Amendment) Policy, 2014.

2. I. A. No. 1 of 2025 has been filed in both the writ applications for amendment in the prayer for a direction to the

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respondent-State to disburse the amount of Rs. 5,57,84,700/- and Rs. 1,90,66,231/- respectively towards the interest subsidy for a period of 7 years from 01.04.2017 to 31.03.2024 and 01.03.2017 to 01.03.2024 respectively, and also to pay interest at the rate of 2 per cent upon the entire calculated amount.

3. Considering the nature of prayer made in the I. A. Nos. 01 of 2025, in both the writ applications, the same are allowed and will take the forming part of the main writ applications.

BRIEF FACTS OF CWJC No. 16164 OF 2022

4. The petitioner is a Public Limited Company, duly incorporated under the provisions of the Companies Act, 1956, on 13.12.2011, bearing Corporate Identity Number U31908WB2007PLC118886, and having its registered office at 76, Pandit Purushottam Roy Street, Kolkata**.**

5. With a view to promote industrial development within the State of Bihar, the Government of Bihar formulated and notified the Bihar Industrial Incentive Policy, 2011 (herein after referred to as '2011 Policy'), promising various fiscal and non-fiscal incentives to attract industrial investment.

6. The 2011 Policy was approved by the State Cabinet and notified in the Official Gazette vide Resolution No. 691, dated

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09.06.2011, issued by the Department of Industries and published on 10.06.2011. A copy of the 2011 Policy has been annexed as Annexure 2 to the writ application.

7. Upon mid-term review of the 2011 Policy, the State Government decided to introduce certain amendments in the 2011 Policy. Accordingly, the Department of Industries issued the Industrial Incentive (Amendment) Policy, 2014 (herein after referred to as the '2014 Amendment Policy'), vide Letter No. 11, dated 05.01.2015, which was made effective from the date of its notification (Annexure 4).

8. The 2014 Amendment Policy was framed by introducing specific amendments to the 2011 Policy, and Clause 8 thereof inserted sub-paragraph (vi) in Paragraph 4 of the 2011 Policy, thereby providing for grant of interest subsidy at the rate of 2 per cent on the interest charged on term loans availed from the banks or financial institutions, payable for a maximum period of seven years from the date of commencement of commercial production.

9. In furtherance of the promises made under the 2014 Amendment Policy, the Department of Industries, Government of Bihar, issued a notification bearing Memo No. 982, dated 11.06.2015, laying down the procedure for grant of interest

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subsidy and specifying the date from which the amendment would take effect (Annexure–5).

10. The petitioner company applied for approval of the proposal for establishment of 25 MW power generation solar unit, initially proposed to be set up at Madhubani, Buxar, or Chapra. However, due to certain practical difficulties, the proposed location of the unit was subsequently changed to Nawada, which was approved by the State Investment Promotion Board (SIPB) in its meeting held on 26.03.2012 from the date of power purchase agreement.

11. Thereafter, the proposal of the petitioner company for establishment of the solar power generation unit at Nawada was approved by the State Cabinet on 02.07.2013 and the said approval was duly communicated to the petitioner company vide Letter No. 1286, dated 11.07.2013.

12. For the purpose of implementation of the project, the petitioner applied for a term loan, amounting to Rs. 49.92 crores, from the State Bank of India for its 10 MW power generation project at Nawada, and the Bank sanctioned the term loan vide Sanction Letter No. BR/RM-2/2016-17/466, dated 07.02.2017. The petitioner company commenced its commercial production

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with effect from 30.03.2017 and obtained the commissioning certificate vide Letter No. 990, dated 14.07.2017 (Annexure–10**)**.

13. After commencement of commercial production, the petitioner company applied for and was granted incentive under the 2011 Policy, and the Department of Industries issued sanction order, bearing Memo No. 1503, dated 16.10.2017, sanctioning capital subsidy of Rs. 5,00,00,000/- in favour of the petitioner.

14. Thereafter, the petitioner, vide application, dated 14.09.2018, applied before the General Manager, District Industries Centre, Nawada, seeking grant of interest subsidy at the rate of 2 per cent on the term loan availed by it, in terms of the 2014 Amendment Policy.

15. Pursuant to the said application, the General Manager, District Industries Centre, Nawada, conducted site inspections of the industrial unit of the petitioner on 16.11.2018 and 22.11.2018, and found the unit to be functional and operational and recommended for grant of interest subsidy to the Department of Industries vide Letter No. 186, dated 28.11.2018.

16. Despite the aforesaid recommendation, no decision was taken by the respondents on the petitioner’s claim for interest subsidy, compelling the petitioner to approach this Court by filing CWJC No. 5932 of 2020.

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17. The writ petition was disposed of by this Court, vide order, dated 12.07.2021, with a direction to the respondents to consider and dispose the representation of the petitioner.

18. The petitioner communicated the aforesaid order, dated 12.07.2021, to the respondents by way of representations, dated 16.07.2021 and 14.03.2022; however, when the respondents failed to comply with the directions of this Court within the stipulated reasonable time, the petitioner was constrained to file contempt petition, bearing MJC No. 1188 of 2022, and this Court, vide order, dated 31.08.2022, directed the respondents to comply with the earlier order passed in CWJC No. 5932 of 2020.

19. Thereafter, the respondents passed the impugned order, vide Memo No. SIPB/906 dated 12.09.2022.

BRIEF FACTS OF CWJC No. 16335 OF 2022

20. The facts of CWJC No. 16335 of 2022 is similar to that of CWJC No. 16164 of 2025.

21. The petitioner is a Private Limited Company, duly incorporated under the provisions of the Companies Act, 1956, on 02.03.2009, bearing Corporate Identity Number U72900WB2009PTC133317, and having its registered office at Kolkata**.**

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22. The petitioner company established 3 MW solar power generation unit at Nawada by availing a term loan of Rs. 16.50 crores from the State Bank of India.

23. The proposal of the petitioner company for establishment of the solar power generation unit at Nawada was approved by the SIPB from the date of power purchase agreement, in its meeting, dated 24.05.2013.

24. The petitioner entered into the Power Purchase Agreement with BSPHCL on 14.09.2016. The petitioner submitted the proposal for extension of the date of the commercial production, which was taken up by the SIPB and approved it in the meeting held on 13.01.2017, which was communicated to the petitioner, vide letter no.132 dated 03.02.2017.

25. The petitioner, vide application, dated 14.09.2018, applied before the General Manager, District Industries Centre, Nawada, seeking grant of interest subsidy at the rate of 2 per cent on the term loan availed by it, in terms of the 2014 Amendment Policy.

26. Pursuant to the said application, the General Manager, District Industries Centre, Nawada, **c**onducted site inspections of the industrial unit of the petitioner on 16.11.2018 and 22.11.2018, and found the unit to be functional and operational

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and recommended for grant of interest subsidy to the Department of Industries vide Letter No. 185, dated 28.11.2018.

27. Despite the aforesaid recommendation, no decision was taken by the respondents on the petitioner's claim for interest subsidy, compelling the petitioner to approach this Court by filing CWJC No. 3578 of 2020.

28. A Division bench of this Court disposed of vide order dated 01.07.2022 with the liberty to the petitioner to approach the respondent, who shall dispose the representation within 4 weeks. The petitioner filed representation, vide its letter dated 13.07.2022 before the Principal Secretary, Department of Industries, but the respondents rejected the claim of the petitioner vide impugned order, bearing Memo No. SIPB/1114, dated 26.09.2022.

Submission on behalf of the petitioners

29. Mr. Nikhil Kumar Agrawal, learned Counsel for petitioners, in both the cases, argued that the Government of Bihar came out with the 2011 policy, where it had promised various incentives for potential promoters to invest in the State of Bihar and to set up industries and such industrial units will be entitled for incentives under the Policy. After mid-term scrutiny of the 2011 policy, 2014 Amendment Policy was introduced, by which certain amendments were incorporated in the 2011 Policy. Clause 8 of the

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2014 Amendment Policy made provisions for insertion of sub-para (vi) in para 4 of the 2011 Policy. The new provision provided subsidy of 2 per cent on interest rate to be charged on term loan from banks/financial institutions. The subsidy was made payable maximum up to 7 years from the date of commercial production.

30. Learned Counsel further submits that in order to carry out the objective made in the 2014 Amendment Policy, a resolution, bearing memo no. 982, dated 11.06.2015, was issued by the Department of Industries, Government of Bihar. The said resolution made the 2014 Amendment Policy to be effective from the date of notification, i.e. on 05.01.2015. He further submits that the petitioners companies have fulfilled 5 years of continuous commercial production and are still continuing production; thereby satisfying the criteria made in the resolution.

31. It has next been submitted that the petitioners companies entered into power purchase agreement on 14.09.2016 with the Bihar State Power Holding Company Limited. Therefore, in terms of the decision of the State Investment Promotion Board (in short, 'the Board'), in its meeting, dated 24.05.2013, that the date of execution of the power purchase agreement is the date of approval by the Board. In the case of petitioners, the date of power purchase

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agreement is after the date of date of enforcement of the 2014 Amendment Policy.

32. The petitioners companies started commercial production from 30.03.2017 and 28.02.2017 respectively and the respondent had issued commissioning certificates to this effect.

33. Learned Counsel further submits that since the date of commencement of commercial production and the date of the approval of the Board is after the enforcement of the 2014 Amendment Policy, therefore, the petitioners are entitled for the grant of interest subsidy.

34. It has next been submitted that in an identical situation, when the incentive was denied, the matter came before this Court, in the case of **Suprabhat Steels v. State of Bihar**, reported in **(1995) 2 PLJR 536**, wherein the Division Bench of this Court held that the terms and conditions of the policy document cannot be changed and it was also held that the Principle of Promissory Estoppel will apply with full force. The State of Bihar preferred Special Leave Petition against this decision before the Supreme Court, in the case of **State of Bihar v. Suprabhat Steels Ltd.**, reported in **(1999) 1 SCC 31**, where the Supreme Court affirmed the view taken by this Court and held that the State,

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even in exercise of Statutory power, cannot deny the benefit under the Industrial Policy available to an industrial unit.

35. Learned Counsel relies on a Division Bench decision of this Court, in the case of **M/s Sunny Stars Hotels Pvt. Ltd. Vs. State of Bihar**, reported in **2020 (2) PLJR 327**, dated 29.07.2019, wherein the Division Bench, while interpreting the 2011 Policy, held that it is exhaustive in itself and contains all requirement while no dependence on any other document and also that the denial of the benefit under the 2011 Policy on the ground of non-approval by the Chief Minister was held to be bad.

36. Accordingly, the submission is that after reading the 2011 Policy as well as 2014 Amendment Policy, approval of the Board was granted with a view to check or examine as to whether the industrial unit be given the benefit of policy or not. He further submits that the approval letters/permission letters issued by the Department categorically provides that incentive shall be considered separately as per the policy.

37. Thus, it is clear that the grant of the subsidy promised by the 2014 Amendment Policy cannot be changed on the ground that the petitioners do not have the board's approval post the date of enforcement of the 2014 Amendment Policy on 05.01.2015 and the contention of the respondents in the counter

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affidavit that there was no financial assessment and consideration of the project of the petitioners for grant of interest subsidy as approval of the Board was granted prior to the date of amendment is completely misconceived and arbitrary.

Submission on behalf of the respondents

38. Per contra, learned Counsel for the respondents argued that the 2014 Amendment Policy was introduced, vide letter no.11, dated 05.01.2015. The nature of amendment is prospective and the project entitled for the interest subsidy was required to get Board's recommendation after the amendment in the 2011 Policy.

39. It has further been submitted that in case there is no financial assessment and consideration of the project for grant of interest subsidy and no assessment as is the duration of interest subsidy, which can be done, only for the projects/units eligible for interest subsidy, i.e. whose applications are received post 05.01.2015 and only those projects are to be appraised and considered by the Board followed by approval of competent authority. In the present case, the recommendation was done prior the enforcement of the 2014 Amendment Policy, i.e. in the year 2013 and that too, without any assurance that any subsidy would be automatically paid to the petitioners.

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40. Learned Counsel next submits that the Board's approval and Power Purchase Agreement with Bihar State Power Holding Company Limited was done on 26.03.2012/27.02.2013 and 26.05.2011/17.09.2012 respectively. He submits that as per the policy for performance of new and Renewable Energy Sources, 2011, financial closure of every renewable project must be completed within eight months from the date of Board's approval.

Consideration and conclusion

41. I have heard learned Counsel for the parties concerned and have gone through the materials available on record, including the 2011 Policy and the 2014 Amendment Policy.

42. The question, which requires consideration before this Court, is whether the petitioners companies are entitled for grant of 2 per cent interest subsidy under the 2011 Policy, as amended by the 2014 Amendment Policy.

43. The amendment in the 2011 Policy was done after mid-term scrutiny for acceleration in the industrial development within the State of Bihar. The 2014 Amendment Policy was implemented by the resolution, dated 05.01.2015. A resolution, dated 11.06.2015, has also been passed laying down the procedure for grant of subsidy. The aforesaid resolution provides that the interest subsidy of 2 per cent can be availed by an industrial unit for a

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period of 7 years from the date of commencement of commercial production and after availing the interest subsidy, the unit is required to run at least for five years. Further condition is that the project/unit must have been approved by Board/District Single Window Clearance Committee.

44. The Board's approval was given to the units in question and this decision was duly communicated to the petitioners, informing that the Board has given consent for considering the Board's approval from the date of power purchase agreement with the Bihar State Power Holding Company Limited, in its meeting, held on 24.05.2013. The date of commencement of commercial production of both the petitioners' units are 30.03.2017 and 28.02.2017 respectively and date of entering into power purchase agreement by the petitioners companies and the Bihar State Power Holding Company Limited is 14.09.2016.

45. The Government Resolution, dated 05.01.2015, lays down the procedure and institutional mechanism for grant and disbursement of 2 per cent interest subsidy introduced by the 2014 Amendment Policy. The resolution is required to be read in conjunction with the 2011 Policy and the amendment thereto.

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46. From the combined reading of the 2011 Policy, the 2014 Amendment Policy and the essential conditions for grant of 2 per cent interest subsidy, it emerged as follows:

(a) the unit must be an eligible industrial unit covered under the 2011 Policy;

(b) the unit must have obtained requisite project approval, either from the Board or through the District Single Window Clearance mechanism, as applicable under the policy framework;

(c) the unit must have availed a term loan from a bank or financial institution;

(d) the unit must have commenced commercial production; and

(e) the application for subsidy must be submitted and processed in accordance with the procedure prescribed under the resolution, dated 05.01.2015.

47. The requirement of approval of the Board is thus a threshold eligibility condition relating to establishment of the industrial unit. The petitioners' units have already obtained approval from the Board from the date of entry into power purchase agreement. Admittedly, the power purchase agreement was entered into on 14.09.2016, i.e. after coming into force of the 2014 Amendment Policy.

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48. The policy framework does not require a fresh or separate approval of the Board merely because an additional incentive was introduced subsequently by way of amendment. The dates of commercial production of the units are also after coming into force of the 2014 Amendment Policy.

49. It is also admitted that the units have availed the term loan from the bank. Once an industrial unit stands validly approved under the Policy and satisfied the post amendment conditions, viz. commencement of commercial production, availing of term loan and compliance with the prescribed procedure, the unit becomes eligible for consideration of interest subsidy. To construe the Board's approval requirement otherwise than the condition as mentioned in the letter granting approval, shall be erroneous.

50. On the point of prospective and/or retrospective application of the 2014 Amendment Act, it is relevant to quote paragraphs 189 and 190 of the decision of the Supreme Court, in the case of **M. Rajendran and others v. M/s KPK Oils and Proteins India Pvt. Ltd. and Others**, reported in **2025 SCC ONLINE 2036**.

> "**189**. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consist of words printed on papers but conceptually, it would be a great deal more than

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> ordinary prose. Of the various rules guiding how a legislation should be interpreted, the one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation and the idea behind the rule is that a current law should govern current activities.
>
> **190**. If legislation confers a benefit on some persons without inflicting a corresponding detriment on some other person or on the public generally, and such conferment appears to have been the legislators object, then the presumption would be that such legislation, giving it a purposive construction, would warrant a retrospective effect."

51. The rejection of the claim of the petitioners on the ground that the 2014 Amendment Policy/resolution applies prospectively is not tenable in the facts of the case, particularly when the petitioners' units fulfilled the criteria of Board's approval as well as commencement of the commercial production, dates of which are after coming into force of the 2014 Amendment Policy.

52. The respondents have erred in treating the dates of Board's approval as the disqualifying factor when the condition of approval itself was that the approval would be considered from the date of power purchase agreement and the power purchase agreement is subsequent to the coming into force of the 2014 Amendment Policy.

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53. Accordingly, this Court comes to the conclusion that the petitioners fulfilled all the criteria as mentioned in the resolution, dated 11.06.2015 for applying the 2014 Amendment Policy for grant of interest subsidy.

54. Considering the aforesaid discussion, this Court holds that the petitioners have fulfilled eligibility conditions including valid project approval and are entitled for grant of 2 per cent interest subsidy on the amount of term loan from the date of commencement of the commercial production, i.e. 30.03.2017 and 28.02.2017, respectively for a period of seven years.

55. Accordingly, the impugned orders, dated 12.09.2022 and 26.09.2022, are set aside. The respondents are directed to calculate the amount of subsidy on interest as per the claim raised by petitioners in their respective applications within a period of one month from today and pay the said amount within a maximum period of four months from today.

56. In the result, these writ applications are allowed.

57. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	04-12-2025
Uploading Date	09-02-2026
Transmission Date	N/A

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