

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4818 of 2017

M/s Shiva Poly Tubes Pvt. Ltd., a Private Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at 307, Narayan Plaza, Exhibition Road, Patna-1 through its Director Sri Ramesh Chandra Gupta, son of late Shriram Gupta, r/o 502, Santosha Complex, Bandar Bagicha, PS-Kotwali, Town and District-Patna 1.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Industry, Vikas Bhawan, Bailey Road, Patna.
2. The Director of Industries, Government of Bihar, Vikas Bhavan, Bailey Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
	:	Mr. Mohit Agarwal, Advocate
	:	Mrs. Priya Gupta, Advocate
For the Respondent/s	:	Mr. Subhash Pd. Singh-Ga3
	:	Mr. Indeshwari Pd. Mandal, AC to GA-3

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 24-03-2021

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

“(i) For a direction to respondents i.e. Department of Industry, Government of Bihar for grant of the Capital Subsidy promised under the Industrial Incentive Policy, 2011.

(ii) For a direction to the respondents to grant other incentives promised in the Industrial Incentive Policy, 2011.

(iii) For a direction to the respondents for grant of subsidies at the earliest to save the petitioner's unit as the petitioner is



facing paucity of funds and is suffering due to non grant of the amount of capital subsidy and other subsidies.

(iv) For issuance of a writ in nature of certiorari quashing the letter dated 13.10.2017 bearing no. 3152 issued under the signature of Director Industries, Government of Bihar wherein and whereby incentives promised by the State Government under the Industrial Incentive Policy 2011 with respect to the petitioner and some others was rejected for want of purported approval by the competent authority being illegal, arbitrary and contrary to the earlier notification dated 15.07.2011 bearing memo no. 2437/Patna issued under the signature of Principal Secretary, Department of Industry, Government of Bihar wherein the competent authority has been appointed for considering the application for grant of incentives promised under the Industrial Incentive Policy 2011 and the application for grant of incentive of the petitioner was duly approved and recommended by the competent authority so defined under the notification dated 15.07.2011.”

2. The learned counsel for the petitioner points out that the present case is squarely covered by a judgment rendered by a



Division Bench of this Court *dated 29.07.2019*, passed in *C.W.J.C. no. 12104 of 2018 (M/s Sunny Stars Hotels Private Limited v. the State of Bihar and others and other analogous cases)*.

It would be apt to reproduce the relevant paragraphs of the aforesaid judgment, 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."

3. The learned counsel for the respondent-State has not controverted the fact that the present case is squarely covered by a judgment rendered in the case of *M/s Sunny Stars Hotels Private Limited (supra)* but has submitted that the State Government, in its Industries Department and the Commercial Taxes Department, shall examine the case of the petitioner and accordingly, grant promised benefits to the petitioner under the *Industrial Policy, 2011*.

4. Having regard to the submissions made by the learned counsel for the parties, the present writ petition stands disposed of with the consent of the parties, in terms of the judgment rendered in the case of *M/s Sunny Stars Hotels Private*



Limited (supra). It is directed that the necessary decision regarding grant of promised benefits/ incentives to the petitioner, under the **Industrial Policy, 2011**, shall be taken positively within a period of 03 months from today. It is needless to state that the Principal Secretary, Department of Industry shall be entitled to examine all the aspects including the issue regarding the case of the petitioner being squarely covered by the aforesaid judgment rendered by the Division Bench in the case of **M/s Sunny Stars Hotels Private Limited (supra).**

5. The present writ petition stands allowed on the aforesaid terms.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.03.2021
Transmission Date	NA

