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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 6759/2001**

Reserved on : 27th August 2010
Decision on : 7th September 2010

BRIJ FERTILIZERS PVT. LTD. Petitioner
Through Mr. Kaushal Yadav with
Mr. Pradeep Yadav, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Ramesh Purnia, Advocate.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

JUDGMENT
07.09.2010

1. Originally this writ petition was filed by the eight Petitioners seeking the release of the subsidy on the sale of Single Super Phosphate ('SSP'), being provided by the Government of India, Ministry of Fertilisers and Chemicals ('MoFC') on the sale of SSP in terms of the revised Scheme dated 10th June 1994. The grievance of the Petitioners was that on account of an order dated 28th September 2001 issued by the MoFC, the units were categorised in A, B and C categories arbitrarily and the release of subsidy to category "C" units, like the Petitioners, was postponed till the completion of the adjudication of the legal proceedings pending against them. Accordingly, the Petitioners also challenged the validity of the aforementioned order dated 28th September 2001.

2. On 16th December 2005, a learned Single Judge of this Court relied on the order dated 28th October 2005 passed in another writ petition being Writ Petition (Civil) 20884 of 2005 (*Vijay Fertilisers Pvt. Ltd. v. Union of India*) and dismissed the petition. None appeared for the Petitioner on that date. When an application was filed for restoration of the writ petition on the ground that the present petition was not covered by the decision in *Vijay Fertilisers Pvt. Ltd.*, the learned Single Judge dismissed the application observing that the remedy for the Petitioners was to file an appeal. It may be mentioned at this stage that the application for restoration was filed only on behalf of Petitioner Nos. 1 and 8. Thereafter, these two parties filed LPA Nos. 979-980 of 2006. By an order dated 28th April 2009, a Division Bench of this Court allowed the appeals and remanded the writ petition to this Court for adjudication on merits. Effectively, therefore, the writ petition was reserved for hearing at the instance of only two of the Petitioners.

3. Mr. Kaushal Yadav, learned counsel at the outset informed this Court that he is appearing only on behalf of Petitioner No. 1 Brij Fertilisers Pvt. Ltd. None has appeared for Petitioner No.8.

4. Mr. Kaushal Yadav submitted that in terms of the revised scheme of 10th June 1994, in order to avail of the subsidy, the SSP manufacturers had to show that the fertiliser produced was of a standard quality. Further, the sale of the fertiliser had to be verified. Along with their claim, the manufacturers had to submit proforma “A” indicating the names of the agency, the name of the traders to whom the sale was made, the quantity sold, the invoice numbers, the concession per ton admissible and the amount of concession

claimed. This has to be supported by a certificate of the Excise Department proving the production and dispatch of the fertiliser so produced. The manufacturers also had to give an undertaking that the fertiliser was of a standard quality as prescribed under the Fertiliser Control Order ('FCO'). They had to undertake that inadmissible claims could be deducted from the bills either if the sale was not verified or if the fertilisers sold were found to be of substandard quality. The Director of Agriculture to whom proforma "A" had to be submitted would in turn transmit his report in proforma "B" to the Joint Secretary (F&S), Department of Agriculture and Cooperation for release of the subsidy. It is submitted that the above subsidy was the difference in the price at which the Petitioners were compelled to sell the fertilisers less the actual cost to the manufacturer.

5. The Petitioner No.1 stated that it fulfilled all the requirements for grant of subsidy to the tune of Rs. 35,23,500/- together with interest. However, the Union of India decided to withhold the subsidy payable since 1999-2000 only on the basis of a press report which alleged large scale bungling in the payment of subsidy. It is the case of Petitioner No.1 that there was no direct evidence of it being involved in making false claims for subsidy. The impugned order dated 28th September 2001 was issued by the MoFC as a result of the inquiry/investigation reports received from the Economic Offences Wing ('EOW') and the Special Investigation Branch ('SIB') concerning SSP units located in Uttar Pradesh ('UP'), included Petitioner No.1. As a result, on the basis of reports of the EOW and SIB and in consultation with the Department of Fertilisers of the State of UP, it had been decided to place the SSP units in three categories: Category A, B and

C.

6. Category C included Petitioner No.1 and the allegations against it were as under:

“Category ‘C’

The units which have brought rock phosphate mostly from private sources have been placed in this category. Some of units have gone to the extent of showing procurement of rock phosphate from non-existent sources. In respect of all such units, majority of the SSP production was based on purchase of rock phosphate which was found to be either false or could not be verified by the concerned investigating agency.”

7. The directions in respect of the 11 SSP manufacturers falling in the above category ‘C’, were as under:

“The State Government of U.P. is directed to file FIR and take appropriate legal/penal action against them. For these units, claim under Concession Scheme shall be processed only after the outcome of legal/penal proceedings to be initiated against these units. The State Government is also requested to investigate about their production and sales of SSP prior to the period of 98-99 because there is a strong possibility that these units might have claimed concession on SSP produced and sold by adopting similar fraudulent methods.”

8. Petitioner No.1 filed an affidavit dated 23rd December 2009 in these proceedings pointing out that on 12th December 2002 the chargesheet was filed against the above two officers. Subsequently, by an order dated 5th July 2006 passed by the Special Judge Anti-Corruption, the two officers of Petitioner No.1, i.e., Mr. Raj Kumar Yadav, Managing Director (‘MD’) and Mr. Twesh Dutt Mishra, Chief Executive Officer (‘CEO’) who were named

as accused in the chargesheet, were discharged. A translated copy of the aforementioned order dated 5th July 2006 passed by the Special Judge Anti Corruption, Meerut, has been placed on record. After discussing the evidence brought on record by the investigating agency, the learned Special Judge came to the conclusion that there was no *prima facie* evidence available on record to make out the offence either under the Prevention of Corruption Act, 1988 or the Indian Penal Code against the accused persons. It is seen from the documents filed along with an affidavit dated 9th May 2003 of the Respondents that as far as Petitioner No.1 company is concerned, the chargesheet dated 25th January 2002 was filed against its Managing Director Mr. Raj Kumar Yadav and its CEO Mr. Twesh Dutt Mishra, with reference to a First Information Report ('FIR') dated 12th November 2000.

9. It is submitted on behalf of Petitioner No.1 that since the only pending criminal case has ended in the discharge of the accused persons, Petitioner No.1 could no longer continue to be kept in category "C" and that its case for release of the fertiliser subsidy had to be processed and the amount as directed be paid to it together with the interest.

10. Despite the above affidavit having been served on counsel for the Respondents, there has been no reply filed thereto. Even during the hearing, no objection was raised to what was stated in the affidavit.

11. It is seen that in the case of some of the other companies, a communication dated 12th February 2008 was addressed by the MoFC to the

Director (Agriculture), Government of U.P, Department of Agriculture, informing it that the charges levelled against Jay Bharat Fertilizers Pvt. Ltd. which was placed in category “B” was found to be not substantiated and that proforma “B” in respect of the above unit for the relevant period could be issued. Likewise, in respect of Vidyut Carbon Products which was in category “B”, a similar letter was written by the MoFC on 23th January 2008 to the Director (Agriculture), Government of U.P. asking the latter to issue proforma “B” for the sale of SSP made by Vidyut Carbon Products during 1998-99 and 1999-2000 since the charges levelled against it had not substantiated. A closure report was filed in respect of M/s Neera Chemicals & Fertilizers, one of the units figuring in category “C”. As regards Ganges Fertilizers and Chemicals Pvt. Ltd., which figured in category “C”, the DoF in its affidavit dated 26th August 2003 filed in this Court informed the Court that it was shifted to category “A”. Likewise, Natraj Organics Ltd., which was being figured in category “B” was shifted to category “A” after due consideration of letter dated 1st July 2002 of the Government of U.P.

12. It appears to this Court that the MoFC has been consistently reviewing the position as regards the release of subsidy to the aforementioned manufacturers of the SSP, who had perhaps wrongly been categorised in A, B and C categories, by the means of the impugned order dated 28th September 2001. It is significant that Petitioner No.1 is no longer seeking to challenge the validity of such categorisation. Petitioner No.1, in fact, relies upon the conditionality attached to its inclusion in category “C” which states that for such units as Petitioner No.1, the claim under the Concession Scheme “shall be processed only after the outcome of legal/penal

proceedings to be initiated against these units”. Therefore, the prayer of Petitioner No.1 for quashing of the order dated 28th September 2001 issued by the MoFC need not be considered.

13. Petitioner No.1 asserts that the only legal proceedings which had been initiated against it was by means of the FIR dated 12th November 2000 and in respect of which a chargesheet had been filed on 12th December 2002 and in which a criminal court passed an order discharging both the MD and the CEO of Petitioner No.1. There has been no denial of the above factual position.

14. In that view of the matter, the Petitioner prays that a direction should be issued to the Union of India as well as the State of U.P. to release the subsidy to Petitioner No.1 on the sale of SSP along with the interest. It may be maintained here that Petitioner No.1 claimed before this Court interest on the basis of provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (‘MSMED Act’).

15. Accordingly, in respect of Petitioner No.1, the writ petition is allowed and a direction is issued to Respondent No.1 to process the case of Petitioner No.1 for release of subsidy which has been withheld till date on account of the order dated 28th September 2001 within four weeks. The MoFC will within that period write to the Director of Agriculture, State of U.P. asking the latter to send the proforma in Form “B” in respect of Petitioner No.1 for the relevant period. A direction is separately issued to Respondent No.3, Director of Agriculture, State of U.P., to forward the

proforma “B” in respect of Petitioner No.1 company to the MoFC within a period of four weeks from today. The Union of India will process the case of Petitioner No. 1 within four weeks and after ascertaining the amount of subsidy, owed to Petitioner No.1, will release the said amount together with any interest that Petitioner No.1 may be entitled to in terms of the revised scheme as well as the MSMED Act for the period during which the subsidy was withheld, within a period of 12 weeks from today. The writ petition as far as Petitioner No.1 is concerned is partly allowed with the above directions.

16. As regards Petitioner No.8 there is no appearance on its behalf. No material has also been placed on record for grant of any relief to it. Accordingly, the writ petition as far as Petitioner No.8 is concerned stands dismissed.

S. MURALIDHAR, J

SEPTEMBER 7, 2010

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