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

+ **W.P.(C) 6085/2019**

PARADEEP PHOSPHATES LIMITED & ANR Petitioners

Through: Mr. Dhruv Mehta, Sr. Advocate with
Ms. Amishka Sharda, Ms. Raveena
Rai, Mr. Anubhav Ray, Advocates.

versus

DEPARTMENT OF FERTILIZERS & ANR Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC,
Ms. Archana Surve, Govt. Pleader,
Mr. Himanshu Kaushik, Mr. Amit
Kumar Rana, Mr. Abhinav Bhardwaj,
Mr. Kushagra Kumar, Advocates with
Mr. Mukesh Meghwal, Deputy
Secretary for UOI.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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29.04.2025

1. By way of present writ petition filed under Article 226/227 of the Constitution of India, the petitioners seek the following reliefs:-

“(a) a Writ, Order or direction quashing and setting aside the Impugned Order dated 18 February 2019 passed by Respondent No. 1;

(b) a Writ, Order or direction to the Respondents to release the Subsidy i.e. INR 53.50 Crores (Indian Rupees Fifty Three Crore and Fifty Lakh only) payable to the Petitioner No. 1 under the Subsidy Scheme along with the applicable interest;”

2. The petitioner No.1 company is engaged in the business of import/export of fertilizers. There exists a Nutrient Based Subsidy Policy



dated 04.03.2010 (hereafter, 'NBS Policy') read with Notification No. D(FA)/CCEA/2011 dated 25.10.2012 as well as Circular/letter No. 2.11-16/12-FA/OF/FMS dated 13.06.2013 (collectively, the 'Subsidy Scheme') which has been promulgated by respondent No.1. By this policy, the manufacturers/importers of Phosphatic & Potassic (P&K) fertilizers are compensated for selling the fertilizers to farmers at a reduced price. As per the Fertilizer Control Order (FCO), the fertilizer samples had to be compliant with certain specifications. One of the criteria was the content of Water soluble phosphates (as P_2O_5), which at the time of import in the present case was 41%, with a permissible tolerance limit of 0.5 units. This criteria has been subsequently revised in 2017 to be 39.5%.

3. The dispute in the present case arises in the context of import of 38,947.1 MT of Di-Ammonium Phosphate ("DAP"), a P&K fertilizer from a Chinese manufacturer which arrived at Mundra Port, via the vessel *M.V. Arinaga* on 08.08.2013. This consignment was dispatched for sale by petitioner No.1 to Uttar Pradesh, Madhya Pradesh and Punjab. These States have thereafter issued State Quality Certificates, as per the fertilizer policy, certifying that the consignment was compliant with FCO standards. However, during the unloading, the Senior Fertilizer Inspector, Central Fertilizer Quality Control & Training Institute (CFQC&TI), Faridabad took a sample which was analysed at their laboratory. Vide Analysis Report dated 02.09.2013, the sample was declared non-standard because the water soluble phosphate (P_2O_5) content was reported as 39.53%, against the then specified minimum requirement of 41%, per Schedule 1, Part A of the FCO. On petitioner's request, the said sample was subsequently retested by the State Fertilizer Quality Control Laboratory (SFQCL), Jodhpur, and as per the



referee analysis dated 30.01.2014, the sample was once again declared non-standard, as the water soluble phosphate (P_2O_5) content was found to be 39.44%.

4. On basis of declaration of petitioner No.1's consignment as sub-standard, its claim for subsidy under the NBS Policy was withheld, as communicated vide letters dated 13.12.2013 and 02.07.2014. Apart from addressing various communications and representation to the respondents, the petitioner No.1 also forwarded the two reports to ICAR for comments as to whether a reduction of 1.47% in the water soluble P_2O_5 content in DAP would affect the availability of P_2O_5 to the crop. Vide letter dated 12.11.2014, ICAR stated that "*fertilizers having 85% of total citrate soluble P as water soluble P is at par with 100% water soluble P.*" After its efforts failed to lead to any fruition, petitioner No.1 approached this Court by way of W.P. (C) No. 12080 of 2018. Vide order dated 13.11.2018, this Court directed respondent No.1 to consider representations of petitioner No.1. Thereafter, the impugned order came to be passed, rejecting petitioners' representation and disallowing its claim for subsidy.

5. Learned Senior Counsel for the petitioners, while assailing the impugned order, argues that the sole consideration for grant of subsidy as set out in the Subsidy Scheme is the issuance of Quality Certificates by the respective State Governments as per 'Proforma B', in accordance with the procedure for the release of fertilizer subsidy issued by Respondent No.1. These Quality Certificates were duly provided by the States of Uttar Pradesh, Madhya Pradesh and Punjab confirming that the consignment met the FCO standards. Therefore, it is claimed that respondent No. 1's rejection of the subsidy claim, based on a separate lab report rather than the valid



State Quality Certificates, is arbitrary and contrary to the Scheme's provisions. While placing reliance on the decision rendered by the Supreme Court in the case of Neyveli Lignite Corporation Ltd. v. Commercial Tax Officer, Cuddalore and Anr. reported as **(2001) 9 SCC 648**, the learned Senior Counsel submits that the NBS policy is the binding administrative framework that respondent No. 1 is to take into account while deciding the petitioners claim for subsidy.

4. It is further stated by learned Senior Counsel for the petitioners that the consignment was within the permissible criteria for water solubility inasmuch as the respondents vide their Minutes of Meeting dated 09.03.2012 noted that the ICAR has clarified that the fertilizers having 85% or more of water soluble P_2O_5 was nutritionally at par with fertilizers having 100% water soluble P_2O_5 . Hence, the mechanical classification of these fertilizers as non-standard is arbitrary and unreasonable. Reliance has been placed on the judgment of Madras High Court in **W.A. No. 2584/2022** titled as Government of India vs. Greenstar Fertilisers Ltd.

Lastly, it is stated that as regards to the finding in the impugned order that there is nothing to show that the fertilizers for which Quality Certificates were issued belonged to the consignment imported by the petitioner No. 1, the same rather shows non-application of mind. It is submitted that the petitioners vide its representation dated 13.02.2019, enclosed the detailed documentation, including dispatch records, railway receipts, and freight bills to establish the link between the consignment received at Mundra port and its delivery to States of U.P., Punjab, and Madhya Pradesh.



6. *Per contra*, learned counsel for the respondents, while defending the impugned order, contends that the Writ Petition is not maintainable inasmuch it pertains purely to a commercial transaction based on a contract and there is no error in the decision making process. He further submits that the minutes of the meeting dated 09.03.2012, as well as ICAR's response clarifying that fertilizers containing 85% or more of water-soluble P_2O_5 are at par with those containing 100%, are merely advisory in nature and not binding. It is submitted that it is settled proposition of law that advices, notings, minutes of meetings do not confer any right to any party but only orders do. As such, the specification of water soluble P_2O_5 applicable at the time of import was 41% and the amended 2017 criteria reducing it to 39.5% cannot be applied retrospectively. Additionally, it is contended that although the States issued the Quality Certificates in Proforma B2, there is no specific entry in the said Proforma that can correlate or conclusively establish that the fertilizers certified therein pertained to the consignment imported by PPL from China. It is submitted that the decision in Greenstar Fertilisers (Supra) relied upon by the petitioners is distinguishable on facts and not binding on this Court.

7. I have heard learned counsel for the parties and gone through the records.

8. The issue which arises for consideration in the present case is whether the consignment of the petitioner failing to meet the standards for water soluble phosphate (P_2O_5) content in the Analysis Report would affect the petitioners claim for subsidy, despite the concerned States giving the requisite Quality Certificates. Section 19 of the FCO states that no person shall sell, import for sale any fertilizer which is not of prescribed standard.



The procedure for release of fertilizer subsidy under the Subsidy Scheme was modified vide notification dated 25.10.2012. The said communication also contains the details pertaining to State Certification for Quantity and Quality. It reads as follows:-

*“..6. State Certification for Quantity - States shall send certificate w.r.t. the quantity {as per Proforma B1) and quality (as per Proforma B2), with the proviso that quantity will be certified on line within 30 days on the IT enabled system, and quality, when once tested within six months. **Short and sub-standard quantity as reported by the State will not be eligible for subsidy and the subsidy paid will be recovered from the companies.** A 30-day window will be made available for the States on the transparency portal to report any discrepancies in the quantity of Fertilizers. In case State certification for quantity for P&K and Urea is not submitted within 30 days, it shall be deemed as no discrepancies on quantity reported by State agencies and the payments will be processed for manufacturers'/importers' balance claims. Profomna-B1 and Proforma-B2 will be sent shortly.*

*7. State Certification for Quality - Currently Proforma-B is required for P&K and SSP for quality certification from States. Now, two sets of Proforma i.e., B1+B2 will be used for all subsidized fertilizers. Considering the delays in getting requisite Proforma from States, **a 180-day window will be made available for the States on the transparency portal to report any discrepancies in the quality of Fertilizers reported.** The State Government/Union Territories concerned will have to certify the receipt of fertilizers within the stipulated time. In case they do not certify, the alert will be sent to the State Governments that the Proforma 'B2' certification has not been received and no allocation as per the supply plan for respective State Government/Union Territory for subsequent month will be made in the Fertilizer Monitoring System...”*

A perusal of the extract reproduced hereinabove would make it evident that fertilizers of sub-standard quality would not be eligible for subsidy, and in fact, the subsidy, if paid already, would be entitled to be recovered. The extract further provides that the declaration to sub-standard quality is to be reported by the states in the form of Proforma B-2 which is



the State Quality Certificate. The States are supposed to inform the number of samples which failed and the quantity of fertilizers affected which shall not be eligible for subsidy to the respondents. In the present case, these State Quality Certificates in Proforma B2 were duly issued by all the State Governments to which the Consignment was dispatched for sale, being the States of U.P., Punjab, and Madhya Pradesh, and the same have been placed on record. These certificates state that samples have been tested in a notified laboratory as per FCO and found to be standard and eligible for subsidy. Nothing has been brought on record by the respondents to show that any of the abovementioned states declared the quality of the fertilizers to be sub-standard. The respondents, without receiving a complaint from any State, could not have stopped the payment of the subsidy to the petitioner No.1 of its own accord. A reference may be made to the decision of the Division Bench of Madras High Court in Greenstar Fertilizers (Supra) wherein the Court came to a similar conclusion and held as follows:-

“13. Even though the learned Deputy Solicitor General of India had relied upon the office memorandum, dated 25.10.2012, the said office memorandum itself clearly prescribes that the States have to certify the quantity as per paragraph No.6 and quality as per paragraph No.7 in the proforma. Once the States certify the quality, the payments have to be made....

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...From a reading of the above, it would again be clear that the release or recovery has to be made depending on the certification of the States. Therefore, we are not able to accept the contention of the learned Deputy Solicitor General of India that merely because it is mentioned that the department will effect recoveries from the subsequent bills, the same would vest the power in the department even in the absence of any complaint as to the sub-standard quality and in the teeth of the certification of quality by the concerned States as per the paragraph No.7. Therefore, we are in agreement with the learned Single Judge that the appellants' action in resorting to recovery of the amounts was not in accordance with law.”



9. Though the aforesaid decision was challenged before the Supreme Court by way of SLP(C) No. 5100/2024 which came to be dismissed vide order dated 30.04.2024. The said decision having attained finality, though not binding holds a persuasive value.

The impugned order has disregarded these certificates by stating that there is no proof that the fertilizers in respect of which the certificates were issued were part of the same consignment that was found to be of sub-standard quality. A perusal of these certificates would show that the name of the product is mentioned as 'DAP Imported' and the month for which Quality Certificate is being issued is mentioned as August 2013, when the shipment was imported via Mudra port. The petitioner has also placed on record Railway Receipt, Stock Transfer advices, and the Freight Claim Bill No. Imp/PPL/0913/4029 dated 18.09.2013 alongwith statement of dispatch from vessel M.V. Arinaga of the Imported DAP in the month of August 2013. As is evident from the petitioner No.1's letter dated 13.02.2019, a detailed breakdown of the dispatched fertilizer consignment was provided to the respondents, however, the impugned order does not deal with the proof put forth by the petitioner No.1, nor does it call for further proof.

10. Viewed from another angle, the minutes of meeting ("MoM") dated 09.03.2012 held between ICAR and respondents clearly state that fertilizers having 85% or more of water soluble P_2O_5 were nutritionally at par with fertilizers having 100% water soluble P_2O_5 . The MoM recommended revised criteria to be framed. Furthermore, in the year 2014, Respondent No.1 had written a letter dated 31.10.2014 to ICAR for its views on the petitioner No.1's case. ICAR vide its response dated 12.11.2014 reiterated the opinion



held in the MoM, stating that :-

“However, in general, efficiency of P fertilizers may be considered at par upto a water-soluble content of 85% as % of citrate soluble P in the fertilizer. This means, fertilizers having 85% of total citrate soluble P as water soluble P is at par with 100% water soluble P. Further it was stated that the agronomic efficacy of fertilizers containing as low as 60% citrate soluble P is also equally good under certain soil situations (low pH, very high P fixing soils) and P efficient crops. Accordingly, the DoF may take appropriate decision of its own on this issue as deemed fit.”

Admittedly, the consignment of petitioners is in order as per this criteria. Although the MoM state that this criteria may be applied from 01.04.2012, however, implementation of the same was delayed and it was finally done in the year 2017 when in February 2017, the minimum content of Water Soluble Phosphates (as P_2O_5 .) required was reduced to 39.5%. Though eventually, the respondents admit that the petitioner No.1's sample would fulfil the revised criteria but state that the same would not be applicable retrospectively. Pertinently, as noted above, though the criteria may have been revised in 2017, however the decision to that effect had already been taken in 2012. At this stage, gainful reference can be made to the decision in Greenstar Fertilizers (Supra) which held as under:-

“14. The next point to be considered is that whether the entire quantity of fertilizer which is said to be supplied by the writ petitioner can be held to be of non-standard. In this regard, it can be seen that DAP is a fertilizer widely used by the farmers in India as soil fertilizer. The standards are fixed as per the recommendations of the experts by notification under the FCO. It has to be seen that in respect of water-soluble Phosphate, the standard is fixed at 41%, of which, 0.5% is held to be tolerable limit which effectively makes it at 40.5%. Even the same was subsequently reduced by 39.5% and if 5% tolerance limit is to be considered, it comes down to 39%. Even though the said standard is notified only in the year 2017, decision to the effect was taken in the minutes of the meeting, dated 09.03.2012.”



11. Subsidies were intended to benefit the farmers who bought the fertilizers at a reasonable rate after the states certified it to be meeting the requisite standards. Considering that all the States where the fertilizer consignment was dispatched have issued Quality Certificates that the petitioners' fertilizers met the requisite standards, and it also meets the revised criteria as decided in the MoM dated 09.03.2012 and reiterated by the ICAR in 2014. Therefore, the petitioner No.1 is found entitled to avail the subsidy.

12. As a result, the present petition is allowed. The respondents are directed to release the claimed subsidy amount to the petitioner No.1 within 6 weeks from today.

13. The present petition is disposed of.

MANOJ KUMAR OHRI, J

APRIL 29, 2025

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