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

+ **W.P.(C) 8879/2016 & CM APPL. 36175/2016, 4218/2019**

M/S JAY BHARAT FERTILIZERS PVT LTD Petitioner

Through: Mr Kaushal Yadav and Mr
Nandlal Kr Mishra, Advocates

versus

UNION OF INDIA

..... Respondent

Through: Mr Gaurav Sarin, Sr. Panel
Counsel with Mr Harish Kumar,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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29.01.2019

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 16.05.2016, passed by the respondent rejecting the petitioner's claim for interest on the subsidy on the sale of Single Super Phosphate (SSP) during the period 1998-99 and 1999-2000. In addition, the petitioner also prays that directions be issued to the respondent for grant of interest at the rate of 24% per annum for the delay in release of the claims of concession/subsidy of ₹81,92,400/- disbursed for the period 1998-99 and 1999-2000.

2. The petitioner claims that in terms of the Office Memorandum dated 14.02.2011 issued by the Ministry of Chemicals and Fertilizers (hereafter 'the Office Memorandum'), the petitioner is entitled to interest

at the rate of 7% per annum, for the delay in disbursement of the subsidy. The said claim has been rejected principally on the ground that the said Office Memorandum was issued pursuant to the orders passed by this Court in the case of M/s Southern Petrochemical Industries Corp. Ltd. (SPIC), and the petitioner's case could not be considered in parity with the said case.

Factual Background

3. The petitioner is a company incorporated under the Companies Act, 1956. The petitioner is engaged in the business of manufacturing SSP and owns a small scale unit located at Dheerkhera, Meerut, Uttar Pradesh.

4. On 17.06.1994, the Government of India had introduced the revised scheme for providing concession/subsidy to SSP manufacturers with effect from 10.06.1994. The subsidy was to be disbursed on the basis of actual quantum of fertilizers (SSP) manufactured and sold by the claimants.

5. It was alleged that certain manufacturers (twenty nine in number) were indulging in irregularities and availing concession from the Government on the sales of SSP during the years 1998-99 and 1999-2000. It was alleged that such manufacturers were showing fictitious transactions for purchase of Rock Phosphate and were showing paper sales. In view of the aforesaid allegations, the Department of Agriculture, Government of India – which was administering the scheme for providing subsidy to SSP Units – stopped payments of subsidy to the

concerned SSP units and requested the State Government of Uttar Pradesh to conduct an enquiry.

6. On the basis of the allegations, SSP units were categorised in three categories termed as category A, B and C. The petitioner was placed in category B, which consisted of units that had allegedly procured Rock Phosphate from private sources showing false production, ranging up to 30%.

7. On 24.01.2005, an FIR (FIR No. 12/05) under Section 467, 468, 471, 420 and 120B of IPC was registered, *inter alia*, against the petitioner at PS Kharkhoda, Meerut. It is stated that after a detailed investigation, the investigating agency filed a final report absolving the petitioner from the above-mentioned charges.

8. On 12.02.2008, the respondent sent a letter to the Director (Agriculture), Government of Uttar Pradesh requesting him to forward Proforma B in respect of the petitioner company for the sale of SSP during the period 1998-99 and 1999-2000. The said Proforma was required for processing the claim of subsidy, in terms of the said scheme.

9. On 18.05.2008, the Special Chief Judicial Magistrate, Meerut, Uttar Pradesh, accepted the final report submitted by the investigation agency. On 25.05.2009, the Director (Agriculture), Government of Uttar Pradesh, forwarded Proforma B duly verifying the sale of SSP during the period in question. Thereafter, on 22.07.2009, the petitioner was asked by the respondent to submit its claim for subsidy for the period 1998-99 and 1999-2000.

10. On 01.08.2009, the petitioner submitted its month wise claim of concession/subsidy for the aforesaid period. On 22.09.2011, the petitioner made a representation for release of its claim of subsidy for the period in question, along with interest at the rate of 24% per annum from 28.09.2001.

11. On 29.09.2011, the respondent requested the Inspector General of Police, Economic Offences Wing, Uttar Pradesh to intimate the respondent about the outcome of the submission of the investigation report before the Chief Judicial Magistrate, Meerut. The petitioner responded to the aforesaid letter by a communication dated 03.10.2011, informing the respondent regarding the outcome of the final report filed before the Chief Judicial Magistrate, Meerut.

12. Since the respondent had not disbursed the subsidy as claimed by the petitioner, the petitioner filed a writ petition (W.P.(C) 7588 of 2011) before this Court, *inter alia*, praying for release of the subsidy. The said petition was taken up on 19.10.2011, wherein this Court was informed that the petitioner's claim was pending consideration and the same would be decided within a period of four weeks.

13. On 14.12.2011, the respondent sanctioned the claim of the petitioner's claim for subsidy, however, did not accede to the petitioner's request for interest. In view of the above, the said petition (W.P.(C) 7588 of 2011) was disposed of by an order dated 27.08.2014, *inter alia*, directing the respondents to decide the petitioner's representation with regard to the interest in terms of the Office Memorandum, within a

period of four weeks.

14. By a communication dated 03.12.2015, the respondent rejected the petitioner's claim for interest on delayed payment of the subsidy on the ground that the Micro, Small and Medium Enterprises Development Act, 2006 (hereafter 'the MSMED Act') was inapplicable and, therefore, no interest could be paid under the said Act.

15. Aggrieved by the communication dated 03.12.2015, the petitioner filed a writ petition (being W.P.(C) 1550 of 2016), *inter alia*, contending that the petitioner had made a claim for interest in terms of the Office Memorandum and the claim ought to have been considered as such and not under the MSMED Act. The said writ petition (W.P.(C) 1550 of 2016) was disposed of by an order dated 18.03.2016, whereby the order dated 03.12.2015 rejecting the petitioner's claim for interest was set aside and respondent was directed to consider the petitioner's claim for interest on delayed payment of the subsidy in accordance with the office memorandum dated 14.02.2011 (OM No.17/21/2001-MSHP /MPR23011 /20/2012-MPR).

16. In compliance with the aforesaid order, the petitioner's claim for interest was considered in terms of the Office Memorandum and was rejected vide the impugned order.

Reasoning and Conclusion

17. It is apparent from the facts as stated above that the petitioner's claim for subsidy under the revised scheme for the years 1998-99 and

1999-2000 was accepted. Thus, indisputably, the petitioner was entitled to receive the subsidy at the material time. It is the respondent's contention that the claim for subsidy could not be processed, in view of the allegations against the petitioner which required investigation.

18. Admittedly, the scheme does not entail providing for any interest on subsidy. Mr Sarin, learned counsel appearing for the respondent had contended that no interest would be payable till the petitioner's claim for subsidy was established. He submitted that in view of the allegations, the petitioner's claim could not be processed at the material time. He contended that the Office Memorandum was wholly inapplicable, as it related to cases where the subsidy had been revised downwards with retrospective effect.

19. Mr Yadav, learned counsel appearing for the petitioner countered the aforesaid submission. He contended that even if it is accepted that the petitioner's claim for subsidy could not be processed at the material time, there was no impediment to the respondent from processing the claim after 25.05.2009 – the date on which the Director (Agriculture), Government of Uttar Pradesh, had forwarded Proforma B duly verifying the sales of SSP for the period in question.

20. Insofar as the petitioner's claim for interest under the Office Memorandum is concerned, it is apparent that the same is not applicable to the petitioner's case. The plain reading of the Office Memorandum indicates that the respondent had reduced the concession to manufacturers / importers of DAP. This was challenged by M/s Southern

Petrochemical Industries Corporation Ltd. (SPIC) and other manufacturers by way of a writ petition (being W.P.(C) 1503 of 1998) in this Court. The Office Memorandum indicates that this Court had passed an order dated 06.07.2007, directing that the order dated 03.02.1998 ought to be given effect from the said date and not from October, 1997. The said order was challenged by SPIC in an appeal before the Division Bench of this Court (being LPA No. 231/2008). The respondent had also appealed against the order dated 06.07.2007 (being LPA 95/2008) By an order dated 23.11.2009 passed by the Division Bench, the order dated 06.07.2007 passed by this court as well as the order dated 03.02.1998 passed by the respondent, were set aside. And, as the Office Memorandum indicates, the Division Bench directed that interest be paid at 7% per annum. The appeal preferred by the respondent (LPA 95/2008) was rejected.

21. The respondent had preferred a Special Leave Petition before the Supreme Court (being SLP No. 15688 - 15689 of 2010) impugning the order dated 23.11.2009 passed by the Division Bench of this Court in LPA No. 231 of 2008 and LPA No. 95 of 2008. The said SLP was also dismissed.

22. In view of the above, the claim made by the manufacturers/importers of DAP was allowed. It is apparent from the above that the Office Memorandum was issued in a specific case pursuant to the directions issued by this Court. In view of the above, the decision of the respondent that the Office Memorandum is not applicable, cannot be faulted with.

23. Having stated the above, it is also apparent that there has been a serious delay in processing the petitioner's claim for subsidy. There is merit in the petitioner's contention that there was no impediment for the respondent to process the petitioner's claim for subsidy under the Scheme and, the delay after the year 2009 cannot be justified.

24. It is seen that the respondent had, by a letter dated 12.02.2008, requested the Director (Agriculture), Government of Uttar Pradesh, to forward Proforma B verifying the sales of SSP as claimed by the petitioner. The said Proforma was forwarded by the Director (Agriculture) on 25.05.2009. Thereafter, on 22.07.2009, the petitioner was asked to submit its claim for subsidy. Admittedly, the petitioner had submitted its month wise claims for subsidy for the relevant period on 01.08.2009.

25. In view of the above, the petitioner's claim ought to have been processed immediately thereafter. Even assuming that the respondent required four more weeks to process the claim, this Court finds no reason whatsoever why the processing of the petitioner's claim was delayed thereafter. Whilst, it is correct that the Office Memorandum is not strictly applicable. It cannot be disputed that the rationale of granting interest under the Office Memorandum is to compensate the manufactures for the delay in disbursement of subsidy. In that case, the claim of the manufacturers/importers had already been established and the controversy only related to the quantum of subsidy. Once this Court had found that the same was payable, the respondent was also directed to pay interest on the same. This rationale will also hold good in the case of the

petitioners as well, since there is no reason for denial of subsidy after the petitioner had submitted its claim on 01.08.2009.

26. This Court is of the view that the respondent has unjustifiably delayed the disbursement of subsidy and it would be apposite to compensate the petitioner with interest at the same rate as determined by the respondent in other cases (that is, at the rate of 7% per annum as stipulated in the Office Memorandum).

27. In view of the above, the respondent is directed to pay interest at the rate of 7% per annum from 01.09.2009 (that is, four weeks after the petitioner had submitted its month-wise claim) till the date of payment.

28. The petition is disposed of in the aforesaid terms. The pending applications are also disposed of.

VIBHU BAKHRU, J

JANUARY 29, 2019
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