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

+ **W.P.(C) 6667/2024 & CM APPL. 27721/2024**

M/S SAI FERTILIZERS PRIVATE LIMITED Petitioner

Through: Mr. Balbir Singh, Sr. Advocate with
Mr. V. Chandrashekara, Ms. Amritha
and Mr. Shyam Gopal, Advocates.

versus

UNION OF INDIA & ORS Respondents

Through: Mr. Apoorv Kurup, CGSC with Ms.
Gauri Goburdhun, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

10.05.2024

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1. The Petitioner has approached this Court challenging an Order dated 13.03.2024 passed by the Respondent removing the Petitioner from the benefit of Nutrient Based Subsidy (NBS) Policy.
2. The facts in brief leading to the writ petition is that proceedings were initiated against the Petitioner for certain infractions by the Petitioner by way of a show cause notice which was served on the Petitioner on 03.01.2024.
3. Since there was a dispute regarding the time period within which the Petitioner had to respond, the Petitioner approached this Court by filing W.P.(C) 2898/2024 and this Court on 28.02.2024 has passed the following order:-

“1. The Petitioner has approached this Court challenging the Order dated 23.02.2024 passed by the Respondents by which the Petitioner’s name has been



removed from the Nutrient Based Subsidy Policy.

2. It is stated by the learned Senior Counsel for the Petitioner that the aforesaid Order dated 23.02.2024 has been passed subsequent to issuance of a Show Cause Notice dated 03.01.2024 which is the subject matter of challenge in the W.P.(C) 1586/2024. It is the contention of the learned Senior Counsel for the Petitioner that the Show Cause Notice dated 03.01.2024 gave 15 days' time to the Petitioner to file a response to the Show Cause Notice. He states that the Show Cause Notice dated 03.01.2024 was received by the Petitioner without a copy of the report which was finally supplied to the Petitioner on 09.01.2024. He states that without the period of filing the response to the Show Cause Notice coming to an end, the Termination Order has been passed by the Respondents.

3. Learned CGSC appearing for the Respondents, on instructions from the Department, states that the Termination Order shall be kept in abeyance till 03.03.2024 and the Petitioner will be given an opportunity to file a response to the Show Cause Notice dated 03.01.2024.

4. Learned Senior Counsel appearing for the Petitioner states that the Petitioner should be given at least 10 days' time to file a response to the Show Cause Notice.

5. Considering the facts and circumstances of the case, the Petitioner is permitted to file a response to the Show Cause Notice dated 03.01.2024 by 06.03.2024. The Respondents are directed to pass Orders within a week thereafter.

6. It is for the Respondents to consider as to whether the Petitioner can be given an opportunity of oral hearing in accordance with the Regulations or not, if



the Regulations otherwise permit. It is expected that the Respondents will pass a reasoned Order.

7. In case the Order passed by the Respondents goes against the Petitioner, liberty is granted to the Petitioner to take recourse to all such remedies, as may be available, in accordance with law.

8. In view of the above, the writ petitions are disposed of, along with pending application(s), if any. It is made clear that this Court has not made any observations on the merits of the case.”

4. A perusal of Paragraph 6 of the said order shows that the Respondents were directed to consider whether an opportunity of hearing in accordance with the regulations can be given to the Petitioner or not.

5. Though it is stated by Mr. Apoorv Kurup, learned CGSC for the Respondent, that hearing was not necessary in the facts of the case, yet this Court had actually passed an order desiring that the Petitioner would be heard.

6. The Petitioner has not been given an oral hearing to begin with. However, the facts of the case reveal that after the order has been passed, the Petitioner received an e-mail dated 27.03.2024 giving the Petitioner an opportunity of an oral hearing.

7. This Court, at this juncture, is of the opinion that this Court had in fact expressed its desire that the Petitioner should be given an oral hearing and no useful purpose would be served if the Petitioner is given an oral hearing when a decision has already been taken.

8. In view of the above and to ensure that the principles of natural justice are met, this Court is of the opinion that the impugned order must be set aside and the Petitioner must be given an oral hearing by a different set of



officers. Let the oral hearing be given on 20.05.2024.

9. The Petitioner is directed to be present in the office of Respondent for oral hearing. Let the proceedings be completed as expeditiously as possible and a decision be taken after giving a reasonable opportunity of hearing to the Petitioner. In case there is a change in date of hearing, the Petitioner be informed well in advance.

10. It is made clear that this order has been passed without prejudice to the rights and contentions of both the parties including the contentions of the Petitioner that the officer who inspected the premises did not have the jurisdiction to do so, the documents on the basis of which action has been taken have been prepared after the inspection was done and any other contentions which may be raised by the Petitioner.

11. It is made clear that this Court has not made any observation on the merits of the case. The department is directed to proceed ahead in the matter in accordance with law.

12. It is also made clear that that so far as undisputed claims of the Petitioner are concerned, it is always open for the Petitioner to make a representation and it is for the Respondent to decide as to whether any amount which is due and payable can be paid to the Petitioner.

13. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 10, 2024

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