



2024:DHC:126



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

Reserved on: 13.12.2023
Pronounced on: 09.01.2024

+ **W.P.(C) 1800/2015 & CM APPL. 23320/2023**

THE FERTILIZER ASSOCIATION OF INDIA & ORS

...Petitioners

Through: Mr.Arvind K.Nigam, Sr. Adv.
with Mr.Sarad Kumar Sunny,
Mr.Keshav Mann and
Mr.Rohan Dua, Advs.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr.Ravi Prakash, CGSC with
Mr.Varun Agarwal, Mr.Farman
Ali, Ms.Astu Khandelwal,
Mr.Yasharth Shukla, Mr.Aman
Rewaria, Ms.Usha Samnal,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed by the petitioners
praying for the following reliefs:

*“a. Issue writ of Certiorarie and/or any other
Appropriate writ or direction calling for
Records and to set aside the order dated
09.12.2014 passed by respondent n0-2/under
Secretary to the department of fertilizers as
Discriminatory, unfair, inequitable and unjust;*

*b. Issue writ of mandamus and /or any other
appropriate writ, Order or direction directing
the respondent to act upon and Strictly adhere*



to payment/reimbursement/release subsidy Amount within 45 days of the submission of bills as provided And in consonance with the terms and conditions as well as Objectives of the policies notified on 30.1.2003, 08.03.2007 And 02.04.2014 for urea which period equally applies for Manufacturers of P & K fertilizers also under 12.09.2007, 11.07.2008 and 04.03.2010 for P & K fertilizers and 25.08.2008 And 21.04.2010 for SSP and 05.08.2002 for payment Procedures in its true spirit and to there under;

c. Issue writ of mandamus and /or any other appropriate writ, Order or direction directing the respondent to 'in principle' pay Interest on the delayed pending payments towards subsidy, till Today to the member units of petitioner-association upon due Consultation with the said units within a stipulated period."

2. The learned senior counsel for the petitioners, at the outset, restricts the prayer of the petitioners for a direction to the respondents to pay interest at a reciprocal rate for the delayed payment of subsidy towards Urea Fertilizer, and Phosphatic and Potassic (in short, 'P&K') Fertilizer [which also includes Single Super Phosphate (SSP) Fertilizers].

Submissions of the learned Senior Counsel for the Petitioners

3. The learned senior counsel for the petitioners submits that as far as the Urea Fertilizer is concerned, the Maximum Retail Price (in short, 'MRP') for the same is fixed by the respondents. The same is, however, much less than the cost of its production and is aimed at providing



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Urea at subsidised rates to the farmers. In order to compensate the manufacturers of Urea fertilizer for lower realization on account of lower MRP fixed by the Government, the respondents pay difference between the retention price fixed by the Government and their net realization through their sale price, in the form of subsidy to the Urea Fertilizer Manufacturers, that is, the petitioners herein.

4. The learned senior counsel for the petitioners submits that though this is termed as a subsidy, however, the actual subsidy is being availed by the farmers as they procure Urea Fertilizers at a much lower price than the fair price. He submits that the payment made to the urea fertilizer manufacturers by the respondents is, essentially, a reimbursement of the cost price incurred by the Urea Fertilizer Manufacturers, alongwith a fixed and reasonable return.

5. He submits that the above regime is governed by the New Pricing Scheme - III (in short, 'NPS-III'); Clause 7(iv) thereof states that the subsidy to the individual units will be reimbursed within a period of 45 days. He submits that admittedly, the respondents have been delaying the payment of the subsidy to the petitioner companies much beyond the stipulated period of 45 days. He submits that the respondents, however, do not pay interest on such delayed payment of subsidy, which, in turn, leads to a cash crunch to



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the petitioners. He submits that in view of Clause 7(iv) of the NPS-III, the petitioners have a legitimate expectation that the subsidy will be paid within the prescribed time so as to have a smooth functioning of their operations. As the timeline for payment is not adhered to, the respondents must be put under an obligation to pay interest on the said amount of subsidy, for the period of delay in making the payment towards subsidy.

6. The learned senior counsel for the petitioners submits that as far as the P&K Fertilizer is concerned, as per the Notification dated 05.08.2002, the claim of subsidy received by the 10th day of each month has to be processed for payment during that same very month, while the processing of the rest of the claims may spill over and be cleared in the next month.

7. He submits that under the Nutrient Based Subsidy (in short, 'NBS') Scheme applicable on the P&K Fertilizers, the rate of subsidy is fixed by the respondents on the basis of per kilogram (in short, 'KG') of nutrient content contained in the P&K Fertilizers. The rates of subsidy are notified by the Government for four nutrients, that is, N (Nitrogen), P (Phosphate), K (Potash), and S (Sulphur). Single Super Phosphate (SSP) was brought under the ambit of NBS Scheme with effect from 01.05.2010. The said Notification, however, did not change the requirement as prescribed in the earlier Notification dated 05.08.2002,



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directing that the claim received by the 10th day of each month has to be processed for payment during the same very month, while the claim received thereafter, may be processed and spilled over and cleared in the next subsequent months.

8. He submits that the respondents have delayed the payment of subsidy to the petitioner companies much beyond the stipulated period, without making payment of any interest for such delayed payment. He submits that this is a violation of the legitimate expectation of the petitioners that the subsidy will be paid within the prescribed time.

9. He submits that in terms of the Policy, the respondents can charge interest from the petitioner companies at the rate of 14.75% per annum based on the '*Prime Lending Rate*', and a further delay attracts a penal interest at the rate of 3% per annum over and above the rate of 14.75% per annum. He submits that there is no reason as to why a similar provision be not made, where the respondent also is made to pay interest on the delay in making payment of the subsidy payable to the petitioners.

10. The learned senior counsel for the petitioners submits that in the scheme applicable to the Urea and/or P&K Fertilizers, there is no prohibition specifically provided on the payment of interest by the respondents on account of delay in payment of subsidy. The policy framed by the respondents is in the nature of an Administrative



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Order and therefore, in the absence of a specific provision with reference to the payment of interest by the respondents on the delayed payment, the respondents must be made liable to pay interest on the delayed payment to the petitioners. In support, he places reliance on the judgment of the Supreme Court in ***Duncan Industries Ltd. & Anr. v. Union of India***, (2006) 3 SCC 129.

11. Placing reliance on the judgment of the Supreme Court in ***State of Bihar & Ors. v. Kalyanpur Cement Ltd.***, (2010) 3 SCC 274, the learned senior counsel for the petitioners submits that the respondents are bound to adhere to the time limit of 45 days for the release of the subsidy to the petitioners, and on failure to make the payment in the fixed time period, it is obligatory on the respondents to pay interest on such delayed payment.

12. Placing reliance on the judgment of the Supreme Court in ***Secretary, Irrigation Department, Government of Orissa & Ors. v. G.C. Roy***, (1992) 1 SCC 508, and ***Clariant International Ltd. & Anr. v. Securities & Exchange Board of India***, (2004) 8 SCC 524, the learned senior counsel for the petitioners submits that as the petitioners have been deprived of the use of their own money, they are legitimately entitled to be compensated for such deprivation by way of payment of interest. He submits that this Court, therefore, should pass a direction to the respondents to “in-



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principal” make the payment of interest on delayed payment on subsidy.

Submissions of the learned counsel for the Respondents

13. On the other hand, the learned counsel for the respondents submits that in the absence of any provision in the policy/scheme for payment of interest on delayed subsidy payment, the petitioners cannot claim such interest. In support, he places reliance on the judgments of this Court in ***Ram Ganga Fertilizers Ltd. v. Union of India***, 1993 SCC OnLine Del 399; ***Deepak Fertilizer & Petrochemicals Corporation Ltd v. Union of India***, 1996 SCC OnLine Del 433; and ***Varinder Agro Chemicals Ltd. & Anr. v. Union of India***, 1999 SCC OnLine Del 388, and of the High Court of Madras in ***H&R Johnson (India) Ltd. v. Govt. of India***, 2012 SCC OnLine Mad 147.

14. He submits that even otherwise, the petitioners are not entitled to claim interest on any delay in payment of the subsidy, as the interest component is considered, both in cases of Urea and P&K Fertilizer, for determining the cost of the fertilizer to the petitioners. He submits that in case the petitioners are held entitled to the payment of interest for the delayed payment, this would lead to an unjust enrichment to the petitioners, which cannot be allowed. In support, he places reliance on the judgment of the Supreme Court in



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Maharashtra State Electricity Distribution Co Ltd. v. Union of India & Ors., 2020 SCC OnLine SC 248.

15. He submits that under the NBS Scheme, there is no compulsion on the fertilizer manufacturing/importing companies to get themselves registered under the scheme. Any interested fertilizer company, which is either manufacturing or importing the notified P&K Fertilizer grade (at present 25 grades are notified under the NBS), can request for registration under the relevant guidelines. Therefore, it is voluntarily in nature.

16. He submits that in any case, the stipulation that the payment of the subsidy shall be made within a period of 45 days, is applicable only in respect of Urea Fertilizers, where again, there is no clause in the Scheme providing for the payment of interest on delayed payment of subsidy. He submits that in the absence of such provision, this Court, in exercise of its powers under Article 226 of the Constitution of India, cannot mandate payment of interest to the petitioners.

Rejoinder submissions by the learned senior counsel for the Petitioners

17. In rejoinder, the learned senior counsel for the petitioners submits that the assertion of the respondents that the interest component is taken into account while fixing the cost of the manufacturing/importing of fertilizers, is



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incorrect. He submits that the interest component which is taken into account by the respondents is not towards the delayed payment of subsidy but on other components of costs, including the financing charges for the working capital. He submits that it is not foreseeable by the petitioner companies as to how much delay will be caused by the respondents in the payment of subsidy, for it to be taken into account while submitting the cost data to the respondents. He submits that the above plea, in any case, has been raised by the respondents only as an afterthought and does not form a part of the Counter-Affidavit filed by the respondents in the present petition.

Analysis and Findings

18. I have considered the submissions made by the learned counsels for the parties.

19. The respondents have explained the scheme of payment of subsidy on Urea by contending that such subsidy and sale of urea is provided under two different policies, that is, the New Urea Policy, 2015 and the New Investment Policy, 2012. All the petitioner Urea companies are covered under the New Urea Policy, 2015. The respondents further explain that the Scheme is worked out with the Department of Agriculture and Farmers Welfare projecting the requirement of the fertilizers in the country in every season, that is, *Kharif* and *Rabi*. The companies then



manufacture the fertilizers as per the requirement projected. The Government, thereafter, issues notifications fixing the MRP of the Urea. The petitioner companies submit their calculations for subsidy in the prescribed performa, which is as under:

	<u>Details</u>	<u>Amount</u> <u>(Rs/MT)</u>
A.	Variable Cost	
Add:	Energy Cost	
Add	Bag Cost	
Add:	Water Cost	
Add:	Electricity cost	
A	Total variable cost	
B	Fixed Cost (<i>it includes Men power cost, Depreciation, Repair and Maintenance cost, Interest and financing charges, return on Equity etc.</i>)	
	Total cost including profit (A+B)	
Less	Net MRP	
	Subsidy	

20. The respondents submit that the capital employed by the manufacturing companies is based on the para 18 of the policy parameter dated 04.06.2002, which includes interest on Long Term Loans, Short Term Loans, etc.



21. The respondents have annexed with their short note, the proforma calculation of the subsidy under the New Urea Policy 2015. As a sample, the proforma calculation of the subsidy for one of the petitioners, Grasim (now Indorama), is reproduced herein below:

	<u>Details</u>	<u>Amount (Rs/MT)</u>
A.	Variable Cost	
Add:	Energy Cost	15,830.76
Add	Bag Cost	252.09
Add:	Water Cost	3.70
Add:	Electricity cost	
A.	Total variable cost	16,087
B.	Fixed Cost (<i>it includes Men power cost, Depreciation, Repair and Maintenance cost, <u>Interest and financing charges</u>, return on Equity etc.)</i>)	2,062
	Total cost including profit (A+B)	18,149
Less	Net MRP	4,974
	Subsidy	13,175

22. As far as P&K fertilizer is concerned, the respondents explain that, based on the assessment received from the States, it is mandatory for the Department of fertilizer to ensure the availability of the fertilizers. Again,



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the companies manufacture the fertilizers as per the requirement in the country. When the domestic manufacturers are not able to meet the total requirement/demand of the fertilizers within the country, the same are also imported to meet the demand of fertilizers.

23. Under the NBS Scheme, the Department of fertilizers declares the NBS subsidy on P&K fertilizers at the start of the year/season, that is, *Kharif* and *Rabi*, every year/season. The subsidy is announced for each nutrient, that is, N(Nitrogen), P(Phosphate), K(Potash) and S (Sulphur), on a per KG basis, which is converted into subsidy per tonne, depending on the nutrient content in each grade of these fertilizers. Presently, the NBS policy is applicable on 25 grades of P&K fertilizers, including Di-Ammonium Phosphate (DAP), Mono Ammonium Phosphate (MAP), Muriate of Potash (MOP), Triple Super Phosphate (TSP), Single Super Phosphate (SSP), Ammonium Sulphate, Potash Derived from Molasses (PDM), and other 18 grades of NPKS Complex fertilizers. The companies manufacturing/importing P&K fertilizers are free to fix the MRP of the P&K fertilizers at a reasonable level based on the cost incurred / to be incurred up to the retailer point after deducting the subsidy amount to be received from the Government of India.

24. The main aim of the Government of India is to provide subsidy to fertilizers so as to encourage the use of



fertilizers and ensure the availability thereof to the farmers at reasonable rates.

25. The Cost Data analysis is taken from the petitioner companies to ensure that the MRP is fixed at the reasonable price. The Cost Data includes the element of profit in order to ensure that the petitioner companies maintain MRP of P&K fertilizers at a reasonable level. Department of Fertilizers issued a policy/guidelines in 2019, wherein, the Government treats a margin upto 12% on P&K fertilizers as a reasonable margin after considering all the cost incurred / to be incurred by the companies upto the retailer point. A proforma was issued for capturing the cost of fertilizer, which includes the following:

	Details	Amount
	Cost of Import/Production	
Add:	Administrative Cost	
Add	Selling and distribution cost	
Add:	<u>Interest and financing cost</u>	
	Total cost of sales	
Less	Product subsidy	
Less	Freight subsidy	
	Net cost of sales	
Add:	Company margin	
Add:	Dealers Margin	
Add:	Discount	



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	MRP (Excluding Taxes)	
Add:	Taxes (GST)	
	MRP	

26. It is mandatory for all P&K companies registered under the NBS Scheme to submit their Cost Data to the Department of Fertilizers on an annual basis by 31st August for each completed previous year.

27. Where the companies are found to be earning unreasonable profits, recovery orders are issued in compliance with the Office Memorandum dated 15.11.2019.

28. The respondents have claimed that the NBS Scheme does not compel the fertilizer manufacturing/importing companies to get themselves registered under the Scheme. Any interested fertilizer company, which is either manufacturing or importing the notified P&K Fertilizer grades, can request for registration under the relevant guidelines.

29. The respondents further explain the subsidy payment procedures for the different fertilizers under the various dispensations, as under:-

(a) **Urea**

95% of subsidy is released to the manufacturers on basis of the receipt of fertilisers in the districts. Balance 5% claim is released subject to the State



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Government's certification on the quantity in m-FMS as well as fertiliser receipt confirmation by the retailers through m-FMS. The State certification of quantity is to be given within a period of 30 days from the date of receipt, otherwise, it is deemed to have been received. State certification of quality is to be given within 180 days.

(b) **P&K Fertilisers (except SSP)**

85-90% subsidy on P&K Fertilisers is released as 'On Account' payment on the basis of receipt of fertilisers in the district based on the certificate by the Statutory Auditor of the Company. The balance 10-15% claim is released subject to the State government's certification of quantity in m-FMS as well as fertiliser receipt confirmation by retailers through m-FMS. The State certification of quantity is to be given within a period of 30 days from the date of receipt, otherwise, it is deemed to have been received. State certification of quality is to be given within 180 days, otherwise, it is deemed to have been received after the expiry of six months.

(c) **SSP**

In case of sale of SSP, 85-90% subsidy on SSP is released as 'On Account' payment on basis of the first



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point sale, based on the certificate by the Statutory Auditor of the Company. The balance 10-15% claim is released subject to State Government's certification of quantity in m-FMS/as well as fertilizers receipt confirmation by retailers through m-FMS. The State certification of quantity is to be given within a period of 30 days from the date of receipt, otherwise, it is deemed to have been received.

30. The respondents have further explained that before commencement of a Financial Year, the Department of Fertilizers, in consultation with the Department of Agriculture and Cooperation, and the State Governments, assesses the requirement of various fertilizers in the country on yearly basis, and based on the overall requirement of fertilizers, submits budget estimates to the Ministry of Finance. Thereafter, the Ministry of Finance, based on the priority and available resources, allocates a fixed amount of funds with the approval of the Parliament to each Department, including the Department of Fertilizers. There is a provision of review of budget provisions subsequently and submission of Revised Estimates (RE). The Ministry of Finance considers allocation of additional budget under the demands for supplementary grants based on the requirement posed at RE stage and makes revised allocation wherever necessary, based on the availability of resources in the country. Though the budgetary provisions for payment of subsidy



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is made based on probable requirement of various fertilizers, but at times, due to higher consumption of fertilizers, increase in international prices of Urea and production cost of Urea, fluctuation of exchange rate, and maintenance of buffer stock of fertilizers by fertilizer companies, it can substantially increase the subsidy burden on the Government. Whenever, any shortage of funds is noticed, the Department of Fertilizers immediately makes all the possible efforts to get additional funds under supplementary grants or revised estimates. In case no additional subsidy is made available, raising of short term loans against subsidy bill of the company is facilitated to the extent practicable, by making Special Banking Arrangements (SBA) with the banks, as permitted by the Ministry of Finance. Sometimes, there may be delay in payment of subsidy due to the procedural issues relating mainly to the issuance of quality certificates in form of proforma by the State Governments. From 2015-2016, the Department of Fertilizers has taken steps by making the provisions of deemed receipt of proforma in case of non-receipt of the same from the State Government within six months.

31. Based on the above, the respondents assert that the respondents are paying 85-90% of the subsidy to the Fertiliser companies in advance even before the companies pass on the benefits to the real beneficiary, that is, the farmers. It is asserted that the respondents are also taking various steps for making payment of the balance amount to the companies at the earliest,



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however, there may be delays in the payment of subsidy due to the non-availability of funds. There is no provision under the rules for payment of interest on account of delay in payment of subsidy.

32. From the above, what emerges is that, both for Urea as also for P&K Fertilizers, the aim of the government is to provide these fertilizers on subsidised rates to the farmers. For Urea, the subsidy provided to the farmers is paid to the fertilizer manufacturing companies by footing the bill for the differential in the cost and the selling price which is fixed by the Government. For P&K fertilizers, it is passed to the farmers by ensuring that the fertilizer manufacturing/importing companies fix reasonable prices for the fertilizers for the farmers after taking into account the subsidy received by them from the Government. In either case, therefore, the pricing of the fertilizer to the farmers is determined/monitored by the Government.

33. It also emerges that the accounts of the petitioner companies are to be scrutinised by the respondents in order to ensure that the above objective is achieved and there is no unjustified gain made by the fertilizer manufacturing/importing companies. Though, tough timelines are set by the respondents to process the claims of the fertilizer manufacturing/importing companies, the entire process may get delayed for varying period. There is, however, no provision in the Policy/Scheme governing the subsidy regime for Urea and/or P&K Fertilizers, for payment of interest to the fertilizer manufacturing/importing



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companies. The respondents assume that such interest claim of these companies is taken into account and subsumed by them while submitting their respective costing details, as provided herein above.

34. In ***Ram Ganga Fertilizers Ltd.*** (supra), a Hon'ble Single Judge of this Court has held that even though there was a Clause in the Scheme which provides for payment of interest in case where the fertilizer company is found to have received subsidy in excess, on principle of parity, a direction to the Government to pay interest where there is a delay in release of subsidy, cannot be passed. I may quote from the judgment as under:

“10. My attention was drawn by learned counsel for the petitioners to the stipulations in the Scheme to the effect that if the petitioners failed to credit to the account of FICC the excess amount of the subsidy received within a particular period they were made liable to pay interest to the respondents @ 2.5 per cent over and above the bank's rate of interest for the working capital. Learned counsel, therefore, submitted that on the same parity of reasoning the respondents should also pay interest to the petitioners when there is inordinate delay on their part to pay the subsidy. In my view, though on a parity of reasoning and analogy, absence of such a stipulation in favour of the petitioners at first sight may seem to be odd and incongruous but the fact remains that whereas a specific stipulation for payment of interest by the petitioners to the respondents exists in the scheme, it has been avoided in favour of the petitioners. Therefore, in the absence of such a stipulation, for payment of interest by the respondents, there have to be compelling



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reasons, for which facts of each case have to be seen.”

35. The above judgment was followed by the Division Bench of this Court in ***Deepak Fertilizers & Petrochemical Company*** (supra), holding as under:

“6. After decision of FICC the only issues which now survive in this petition are:—

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iii) Interest

Petitioners submit that the respondent shall also be directed to pay the amount which may become payable to them in 1983 with interest as the respondent has wrongfully withheld the amount due to the petitioners. Petitioners submit that under the Scheme the delay in payment of the excess amount attracts payment of interest at the rate of 16% p.a. by the unit whose retention price is lower than the ex-factory price. That may be so but it has to be borne in mind that Scheme does not provide for payment of interest to the units whose retention price under the Scheme is higher than the ex-factory price and who are entitled to receive difference from the Fund Account on submission of claim. The Scheme thus does not contemplate payment of interest by FICC. The fixation of price is a time consuming process and that may be the reason that Scheme does not postulate payment of interest from the Fund. Reference may also be made to the decision of one of us (D.K. Jain, J.) in Ram Ganga Fertiliser etc v. Union of India, C.W. 2062/93 decided on 30th July 1993 holding that where a specific stipulation for payment of interest by petitioners to respondent exists in the Scheme and such a stipulation for payment of interest to the petitioner is absent, there have to be compelling reasons to award interest for which facts of each case have to be



seen. The position is similar in the present case. Having regard to the facts and circumstances of the case, in our view, the petitioners are not entitled to payment of any interest. We find no compelling reasons to award interest in favour of the petitioners."

36. The above principle was further reiterated by another Hon'ble Single Judge of this Court in ***Varinder Agro Chemical Ltd.*** (supra), as under:

"6. In the present case, the Communication dated November 11, 1982 no-doubt prescribes rate of interest as payable by the petitioners when there is excess payment made by the respondents. This, however, does not imply that the petitioners shall also be entitled to interest on the same basis when there is no specific provision which will permit payment of interest to the petitioners as well.....

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8. The Supreme Court has dealt with the question of delay in reimbursement of medical benefits in the judgement reported as Om Prakash Gargi v. State of Punjab, (1996) 11 SCC 399 to hold that it is inexpedient and not proper to direct the State to pay interest for delay in payment of the reimbursement amount. Paragraph 4 of the judgement makes the following reading:

"We do not find any force in the contention. It is true that but for the benefit of reimbursement of the amount granted by the Government, the petitioner has no right to claim reimbursement. The question is whether on account of delay in reimbursing the amount incurred towards medical expenses, the State should be liable to pay also interest on the delayed payment? We are of the view that it is



inexpedient and not proper to direct the State to pay interest for delay in payment of the reimbursement amount. It requires verification of the amounts spent by the petitioner and similar person. His right only is to get reimbursement and it does not follow that for the delay in the payment of medical reimbursement, he should also be entitled to interest thereon. The order passed by this Court on an earlier occasion was to the effect of dismissing the special leave petition in limine. Therefore, it does not furnish any ratio decidendi for following the same. Under these circumstances, we do not think that it would be proper to direct payment of interest on the delayed reimbursement of the medical expenses incurred by a government servant”.

9. The claim for interest has to be adjudicated by appreciating the evidence on record to determine the cause or causes of delay in payment. The claim of the petitioners required verification and respondents have paid the amount during the pendency of the writ petition. The questions of fact which will arise for consideration cannot be examined in exercise of powers under Article 226 of the Constitution of India. Therefore, the claim of the petitioners fails. The writ petition, as a consequence, is dismissed. Rule is discharged. There will be no order as to costs.”

(Emphasis Supplied)

37. In view of the above judgments, therefore, the relief claimed by the petitioners in the present petition, cannot be granted. In exercise of powers vested in this Court under Article 226 of the Constitution of India, this Court cannot frame a Policy or make a particular provision in such Policy for providing a



particular relief to the petitioners. The Policy also cannot be held violative of Article 14 of the Constitution of India only because, while making a provision for payment of interest by the petitioner companies, it does not provide a reciprocal provision for payment of interest by the respondents in case of delay in processing or paying the claim of the petitioners. Such challenge or claim cannot also be sustained on basis of legitimate expectation.

38. In ***Duncan Industries Ltd. v. Union of India***, (2006) 3 SCC 129, the Supreme Court has held as under:

“35. Turning to the Article 14 argument, we emphatically reiterate the now-accepted position that Article 14 does not require this Court to examine the intricacies of an economic scheme or pricing policy for its merits or its correctness, for that is in the domain of the executive or the legislative branches of the Government. Indeed, even if the Scheme, as revised, is “unwise” or even “unjust”, there is no recourse before us for, as Justice Holmes elegantly put it:

“We fully understand ... the very powerful argument that can be made against the wisdom of the legislation, but on that point we have nothing to say, as it is not our concern.”

36. We are broadly in concurrence with the reasoning of the High Court that in matters of administrative discretion it is not open to the courts to interfere in minute details, except on grounds of mala fides or extreme arbitrariness. Interference should be only within very narrow limits, such as, where there is a clear violation of a statute or a constitutional provision, or extreme arbitrariness in the Wednesbury sense. Neither



the High Court nor have we found any of these vitiating factors in the administration of the Retention Price Scheme and the consequent payments/recoveries of the subsidy amounts. Thus, in our view, the action of the FIC Committee to adversely modify the subsidies framework, cannot be questioned on its merits.”

(Emphasis supplied)

39. In ***Parisons Agrotech (P) Ltd. v. Union of India***, (2015)

9 SCC 657, the Supreme Court has held as under:

“14. No doubt, the writ court has adequate power of judicial review in respect of such decisions. However, once it is found that there is sufficient material for taking a particular policy decision, bringing it within the four corners of Article 14 of the Constitution, power of judicial review would not extend to determine the correctness of such a policy decision or to indulge into the exercise of finding out whether there could be more appropriate or better alternatives. Once we find that parameters of Article 14 are satisfied; there was due application of mind in arriving at the decision which is backed by cogent material; the decision is not arbitrary or irrational and; it is taken in public interest, the Court has to respect such a decision of the executive as the policy making is the domain of the executive and the decision in question has passed the test of the judicial review.”

(Emphasis supplied)

40. In ***Devyani Phosphate (P) Ltd. v. Union of India***, 2013

SCC OnLine Del 448, this Court has held as under:

“31. It is well settled in framing economic policies, the GOI needs a play in the joints. There is no perfect solution to every



conceivable problem which may arise in the implementation of an economic policy. If by and large the policy is fair and achieves the object it seeks to achieve, the court is not called upon to iron out the creases or correct perceived defects in the policy just because there is another point of view available. Policies are forged based on past experience, collation of empirical data and an element of experimentation. Therefore, time and again courts have indicated that policies of the State, if assailed, can be set aside on very narrow grounds of malafides or extreme arbitrariness, or being unconstitutional or even violative of statutory or other provisions of law. In this regard there are several decisions rendered by this court as well as by the Apex Court. I need not burden the judgment by replicating the principle enunciated in this behalf. Suffice it to say, whichever way the present case is examined, it does not fall within the realm of extreme arbitrariness or any other known ground of challenge which perhaps could have persuaded me to strike down the policy in issue."

(Emphasis Supplied)

41. While there can be no challenge to the principles governing the payment of interest and justification of a claim to the same, having noted the above Scheme of subsidy applicable to Urea and P&K Fertilizers, it is evident that, in case of both, for the purpose of cost analysis, the petitioners are required to declare, on a voluntarily and on a self-declaration basis, the interest component in the cost of manufacturing/import of the fertilizer. Though, the petitioners claim that they do not, in such declaration, claim or are even in a position to claim interest on the delayed release of the subsidy, the respondents have stated



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that there is no bar in the policy on the petitioners to claim the same. They submit that even otherwise, these do get added, in one form or the other, in the working capital cost.

42. Whether the claim of interest is inbuilt in the costing claim submitted by the petitioner companies or by any of them, is, therefore, a disputed question of fact. Also, in each case, the reasons for the delay in payment of subsidy may vary; some may give rise to justified grounds to claim interest, while some may not. No uniform policy guideline can therefore, be set by this Court in exercise of its power under Article 226 of the Constitution of India. These matters would be better suited, to be thrashed out in form of a civil dispute and by way of a Suit.

43. Clause 7 (iv) of NPS-III, which has been relied upon by the learned senior counsel for the petitioners, reads as under:

“7. The following measures have been decided to be implemented for movement of Urea to District level and below:-

xxxx

(iv) Subsidy to individual units will be reimbursed based on conformity to planned movement upto district level for controlled and decontrolled urea. The time limit of payment system i.e. 45 days would be adhered to. It will be ensured that no certification by State Governments is required for release of subsidy to urea Units. Subsidy will be paid only when the urea reaches the district.”

44. Though the above Clause, which is applicable to the subsidy on Urea fertilizer, states that the time limit of payment of



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45 days should be adhered to, there are no consequences provided in form of liability to pay interest in case there is a delay in payment. The Clause is intended to sensitize the officers of the respondents so that an endeavour should be made that the payment should be released within a period of 45 days. As noted by the learned Single Judge of this Court in ***Deepak Fertilizers & Petrochemicals*** (supra), there may be reasons for the scheme not to postulate the payment of interest in spite of the above provision, whereby, for guidance, a period of time has been fixed within which the payment should be made. The provision has to be read as only directory in nature.

45. There can be no quarrel with the principle governing the payment of interest as explained by the Supreme Court in ***Clariant International Ltd.*** (supra) and ***G.C. Roy*** (supra), however, at the same time, the facts and circumstances of each case and each delay would have to be seen separately, and a general direction and/or an omnibus direction for payment of interest or inclusion of provision for payment of interest in the policy, cannot be passed by this Court.

46. In view of the above, I find no merit in the present petition. The same is accordingly dismissed, along with the pending application.

47. There shall be no orders as to costs.

NAVIN CHAWLA, J.

JANUARY 9, 2024/Arya/SS/am

[Click here to check corrigendum, if any](#)