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

+ **W.P.(C) 17494/2024**

**GUJARAT STATE FERTILIZERS AND CHEMICAL LTD. AND
ANRPetitioners**

Through: Mr. Dayan Krishnan, Senior
Advocate with Mr. Shamik
Sanjanwala, Mr. Kunal Vyas, Mr.
Aditya Tripathi, Advocates

versus

UNION OF INDIA AND OTHERRespondents

Through: Mr. Vikram Jetly, CGSC with Ms.
Shreya Jetly, Advocate and Mr.
Hussain Taqvi, GP for R-1
Mr. Somiran Sharma, Advocate for
R-3

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER
19.12.2024**

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1. The Petitioner, a company promoted by the Government of Gujarat, is engaged in the business of manufacturing fertilizers and industrial chemicals and asserts to be one of the largest manufacturers of fertilizers in India. Through the present writ petition, the Petitioner challenges the demand statements dated 06th April, 2023 and 26th November, 2024 issued by Respondent No. 3 – GAIL (India) Limited. The Petitioner asserts that by way of these demand statements, Respondent No. 3 is seeking to recover the differential price of gas, purportedly based on the revised annual certification given by Respondent No. 2 – Fertilizer Industry Coordination



Committee¹, which has allegedly also not been supplied to the Petitioner.

2. At the outset, Mr. Dayan Krishnan, Senior Counsel for the Petitioners, points out that the demand statement dated 06th April, 2023, pertains to gas consumption and allocation for the Financial Years 2021-22. Against the said demand, the Petitioners had made representations which were, in fact, acknowledged by Respondent No. 1 – Department of Fertilizers, Ministry of Chemical & Fertilizers, Government of India, who in turn, issued Office Memorandums dated 18th September, 2024 and 24th June, 2024, directing FICC to consider the claims of the Petitioners as per the extant policy and guidelines for gas procurement.

3. Pursuant thereto, the Petitioner made a further representation dated 17th July, 2024, before Respondent No. 2 - FICC in terms of the annual computation for gas utilization for the Financial Year 2021-22. However, it is asserted that without considering the Petitioner's representation, FICC *vide* e-mail dated 10th September, 2024, made a demand for INR 155.78 Crores from the Petitioner as outstanding dues payable to the pool account. Subsequently, *vide* letter dated 1st October, 2024, FICC also indicated that interest @ SBI Base Rate + 4.75% will be payable by the Petitioner in case of non-payment of outstanding dues by 1st January, 2025.

4. Mr. Dayan Krishnan states that despite the Office Memorandums issued by Respondent No. 1, no final view was taken with respect to the demand statements for Financial Years 2021-22. In the meantime, Respondent No. 3 has issued another demand statement dated 26th November, 2024, for the Financial Year 2022-23. In this regard, the Petitioner is apprehensive of defaulting not just on the demand statements,

¹ "FICC"



which are purportedly based on erroneous calculations but also in terms of levy of interest on the outstanding dues of the Pool Fund Account which have been pending on account of representations given by the Petitioner in terms of the Financial Year 2021-22.

5. In such circumstances, Mr. Dayan Krishnan states that in case the FICC were to consider the Petitioner's case, they would be willing to submit the another representation for the Financial Year 2022-23, as well, so that the matter can be comprehensively resolved between the parties.

6. Mr. Vikram Jetly, CGSC for Respondent No. 1, has informed the Court of the latest Office Memorandum dated 20th September, 2024, which reads as follows:

“OFFICE MEMORANDUM

Subject: Non-recognition of Pooled gas (EPMC) for urea production - regarding.

The undersigned is directed to state that this Department has received representations from Rashtriya Chemicals and Fertilizers Limited (RCF) and Gujarat State Fertilizers and Chemicals Limited (GSFC) regarding the above-mentioned subject. The representations of RCF dated 02.09.2024 & 02.07.2024 are annexed at Annexure-A to B while the representation of GSFC dated 17.07.2024 is annexed at Annexure- C.

2. In order to examine the matter and give recommendations on the requests made by RCF and GSFC in their representations, the Competent Authority has constituted a committee with the following composition:

i.	<i>Joint Secretary and Financial Advisor, Department of Fertilizers</i>	<i>Chairperson</i>
ii.	<i>Director (DBT), Department of Fertilizers</i>	<i>Member</i>
iii.	<i>Director (Technical), National Fertilizers Limited</i>	<i>Member</i>
iv.	<i>Representative of PDIL (not below the rank of Dy GM, to be nominated by CMD, PDIL)</i>	<i>Member</i>

3. The committee shall furnish its recommendations within a week.

4. This issues with the approval of the Competent Authority.



Yours faithfully,
(Anil Phulwari)
Director
Ph: 011-23389839
Email: anil.phulwari@nic.in

7. As per the aforementioned Office Memorandum, in order to examine and give recommendations on the request made by the Petitioner and another entity named Rashtriya Chemicals & Fertilizers Ltd.², the competent authority has constituted a committee comprising of the Joint Secretary and Financial Advisor, Department of Fertilizers and other Directors. The aforementioned committee has to now examine the representations of the Petitioners and RCF.

8. In the opinion of the Court, since the committee has been constituted by the competent authority and they are directed to examine the demand statement as well as the representation of the Petitioner for the Financial Year 2021-22, it would be apposite that the Petitioners also submit their representations for the current demand period of the Financial Year 2022-23, which then can be comprehensively examined by the FICC, in accordance with law.

9. Accordingly, the present writ petition is disposed of with the following directions:

9.1 Petitioner shall within a period of ten days from today submit their representation to the committee constituted *vide* Office Memorandum dated 20th September, 2024, with respect to the demand statement dated 26th November, 2024 for the Financial Year 2022-23.

9.2 The Committee constituted *vide* Office Memorandum dated 20th



September, 2024, shall examine the aforementioned representation of the Petitioner along with the representations specified in the Office Memorandum referred above.

9.3 The Committee is requested to furnish their recommendations, after due deliberation, after affording an opportunity of personal hearing to the Petitioners as well as Respondent No. 3, preferably within a period of five weeks from today.

9.4 Till such time, the Committee takes the final view, the impugned demand statements dated 06th April, 2023 and 26th November, 2024 issued by Respondent No. 3, shall be kept in abeyance.

9.5 In the event the recommendations of the Committee do not resolve the Petitioner's grievance, they shall be free to take recourse to appropriate legal proceedings, in accordance with law.

10. With the above directions, the present writ petition is disposed of and all rights and contentions of the parties are left open.

SANJEEV NARULA, J

DECEMBER 19, 2024/ab

² "RFC"