



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

% Date of Decision: 16.05.2025

+ **W.P.(C) 3499/2010 and CM APPL. 7003/2010**

HARSHVARDHAN CHEMICALS AND MINERALS LTD AND
ANRPetitioners

Through: Mr. P.K. Mullick, Mrs. Soma Mullick
and Mr. S.K. Deuria, Advocates.

versus

UOIRespondent

Through: Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Sarvan Kumar, Advocate for
UOI.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present writ petition filed under Article 226 of the Constitution of India, the petitioner seeks to assail the letter/order dated 09.02.2005 (hereinafter, '*impugned order*') passed by the respondent whereby petitioner No.1 was indefinitely blacklisted/debarred from induction in Nutrient Based Subsidy Policy for Single Super Phosphate (SSP) Fertilizer (hereinafter, '*Concession/Subsidy Scheme*'). Additionally, the petitioners seek payment of all dues in respect of the Concession Scheme.

2. The facts, in a nutshell, are that the petitioner No.1, being a manufacturer of SSP Fertilizer, participated in respondent's Fertilizer Subsidy Retention Price Scheme since 1981. Petitioner No.1 was alleged to



have inflated production figures on the basis of forged documents to fraudulently claim excess subsidy from the Government of India.

In this regard, the CBI registered a case against petitioner No.1 in 1996, and two chargesheets have been filed against the petitioner No.1, one for offences under Sections 120-B/420/467/468/471 IPC in the Court of Special Judicial Magistrate, CBI, Indore and other for offence under Section 7 of Essential Commodities Act in the Court of Session Judge, Indore on 20.10.1999. Pertinently, decisions in these cases are still pending. As a consequence of the criminal proceedings, petitioner No.1 was removed from the concession scheme.

3. In the impugned order, it was stated that pending the final outcome of the aforesaid case, respondent would not be in a position to decide as to the payment of subsidy to and re-induction of petitioner No.1 in the Concession Scheme.

4. Learned counsel for the petitioners submits that petitioner No.1 cannot be debarred/blacklisted indefinitely, till the conclusion of the aforesaid cases. Reliance is placed on Daffodils Pharmaceuticals Ltd. Vs. State of UP¹, Kulja Industries Ltd. Vs. Western Telecom Project BSNL², Vetindia Pharmaceuticals Ltd. Vs. State of UP³ and Dhiraj Gupta Vs. South Delhi Municipal Corporation⁴ to submit that the maximum period for which a company can be debarred is 5 years. It is further submitted that the chargesheets in the aforesaid cases were filed by the CBI after approximately 10 years of the alleged commission of the offence and even

¹ (2020) 18 SCC 550.

² (2014) 14 SCC 731.

³ (2021) 1 SCC 804.

⁴ 2023 SCC OnLine Delhi 4497.



after passing of about 25 years, the trial is still pending. Moreover, it is submitted that neither a show cause notice was issued to petitioner No.1 nor any opportunity of hearing was given before passing of the impugned order of debarment, thus, making it violative of principles of natural justice. In support of his submissions, learned counsel places reliance on SBI v. Rajesh Agarwal.⁵

5. On merits, it is pointed out that after discontinuation of the subsidy scheme from 24.08.1992, FICC had appointed independent Senior Fertilizer manufacturing experts to conduct technical audit of petitioner No.1, however, nothing adverse was found. Moreover, it is submitted that even after the allegations, the respondent allowed petitioner No.1 to continue under the Subsidy Scheme till 24.08.1992. Thereafter, from 1998-99 till June, 2001, petitioner No.1 continued to be enlisted by Department of Agricultural and Cooperation under the scheme on '100% certification basis'. However, it is submitted that after the subsidy scheme was transferred back to Ministry of Chemicals & Fertilizers, petitioner No.1 was arbitrarily removed from the Concession Scheme and indefinitely debarred, till the conclusion of the Court proceedings in the aforesaid cases.

As regards to the non-payment of outstanding amount, to the tune of Rs.60,77,897/- for the year 1991-92 and Rs. 8,89,000/- for the period from Oct.2000 to June 2001, attention of this Court is drawn to Internal Note dated 30.09.2004 to contend that the aforesaid outstanding amount is admitted by the respondent. It is, therefore, submitted that the outstanding amount admittedly due to petitioner No.1 cannot be withheld indefinitely.

6. *Per contra*, learned counsel for the respondent submits that as per the

⁵ (2023) 6 SCC 1.



CBI investigation, petitioner No.1 was granted ECA allocation under the Essential Commodities Act, 1955 for production and dispatches for sale during 1989-90 for a total quantity of 24,690 MT. Thus, it is contended that the subsidy amount payable to petitioner No.1 was limited to the said quantity. Moreover, it is submitted that petitioner No.1 could only produce 14,444 MT of SSP fertilizer based upon the genuine purchase and consumption of raw materials, packing materials, consumption of electricity etc. during the aforesaid time period. As per genuine sale bills, petitioner No.1 sold only 9220.60 MT, and the rest of the figures are stated to be exaggerated and forged.

Furthermore, it is submitted that after the transfer of the subsidy scheme to the Department of Fertilizers w.e.f. October, 2000, FICC was again assigned to settle the claims for payment of concession, however, while processing the claims of petitioner No.1, it found irregularities on the part of petitioner No.1 in claiming payment of subsidy in the past. It is only after the matter was duly examined by the Department that the payment of concession was stopped. Therefore, it is submitted that the competent authority has already considered the petitioners' representation and decided to not re-induct petitioner No.1 in the Subsidy Scheme in view of the irregularities committed by it and while the criminal proceedings initiated against petitioner No.1 remain sub-judice.

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

8. Notably, the petitioners, while assailing the impugned order vide which petitioner No.1 was indefinitely debarred from participating in the Subsidy Scheme, have sought re-induction of petitioner No.1 in the said



scheme till the final disposal of the cases filed against petitioner No.1 alleging irregularities in claiming subsidy amount, as well as payment of the claimed dues.

9. As regards the challenge to the impugned order, it in effect indefinitely debars petitioner No.1 from participating in the Subsidy Scheme till the conclusion of the criminal proceedings initiated against it, which are statedly pending even after 25 years. Pertinently, it is a settled position in law that the sanction of debarment, while recognised as an effective deterrent to defaulting participants, has to meet the touchstone of proportionality and reasonableness. In other words, an order of debarment cannot be indefinite and the period of such debarment has to be computed proportionately to the offence desired to be punished or curbed. A gainful reference is made to the decision of the Supreme Court in Kulja Industries Ltd. (Supra), wherein it was held, as reproduced hereinunder:

*“17. ... The freedom to contract or not to contract is unqualified in the case of private parties. **But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto.** The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.*

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*25. Suffice it to say that “debarment” is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. **What is notable is that the “debarment” is never permanent and the period of debarment would invariably depend***



upon the nature of the offence committed by the erring contractor.”

(emphasis supplied)

10. Moreover, the Supreme Court has observed in Daffodills Pharmaceuticals (*Supra*), as subsequently affirmed in Vetindia Pharmaceuticals (*Supra*), that while a normal debarment/blacklisting order has a finite life span, usually up to 5 years at the higher end, an order whose life span is seemingly dependent on the conclusion of a criminal case is more so in the nature of an indefinite directive and thus, far more disproportionate than a debarment order.

11. Indisputably, no show cause notice was issued to petitioner No.1 before the impugned order came to be passed. While it is the respondent's stand that the competent authority examined petitioner No. 1's representation in detail before denying its request, no opportunity of hearing was seemingly provided to petitioner No.1 to dispute the findings of the CBI inquiry, on the basis of which the said decision was statedly taken. Furthermore, no other reason was provided for the indefinite debarment except the pending criminal proceedings against petitioner No.1. In this backdrop, the impugned order is tainted with being not only disproportionate but also violative of the principles of natural justice, insofar as indefinite debarment of petitioner No.1 is considered.

12. Considering the aforesaid legal position, and in light of the fact that more than 25 years have passed since the initiation of the criminal proceedings against petitioner No.1, with no definite conclusion to the same in sight, and that 20 years have passed since the impugned order came to be passed, this Court finds merit in the petitioners' contentions that the



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impugned order is disproportionate and liable to be set aside, to the extent of it debarring petitioner No.1 indefinitely. Insofar as prayers (a) and (c) are concerned, this Court is inclined to agree with the respondent's stand that the same would depend on the outcome of the proceedings pending in criminal prosecution.

13. Accordingly, the present petition is disposed of alongwith pending application in the above terms.

MANOJ KUMAR OHRI
(JUDGE)

MAY 16, 2025/ik

[corrected and released on 29.05.2025]