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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Judgment pronounced on: 27.02.2026**+ **W.P.(C) 9060/2024 , CM APPLs.37030/2024, & 55432/2025**

M/S SAI FERTILIZERS PRIVATE LIMITEDPetitioner
Through: Mr. Dayan Krishnan (Sr. Advocate)
along with Mr. Sahil Monga,
Mr. Shashank Sharma, Mr. Shrudhar
Kale, Advocates.

versus

UNION OF INDIARespondent
Through: Ms. Gauri Goburdhun (SPC) for UOI.

+ **W.P.(C) 11099/2024, CM APPLs.45878/2024 & 68374/2024**

M/S SAI FERTILIZERS PRIVATE LIMITEDPetitioner
Through: Mr. Dayan Krishnan (Sr. Advocate)
along with Mr. Sahil Monga,
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CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petitions have a chequered history inasmuch as a total of six writ petitions (including the present petitions) have been filed in respect of the same cause of action. The factual background is set out briefly hereunder.

2. The petitioner is a MSME Undertaking, manufacturing Single Super Phosphate (SSP) Fertilizer in West Bengal, India. The petitioner acquired the requisite license for the sale of the said fertilizer under the Fertilizer Control



Order, 1985 (hereinafter referred to as 'the FCO'). By virtue of an Office Memorandum dated 10.09.2007, the petitioner was inducted into a Concession Scheme dated 01.10.1992, which was subsequently substituted by the Nutrient Based Subsidy Scheme (hereinafter referred to as 'NBS Scheme').

3. As a manufacturer, the petitioner sells its products in the open market at the rates prescribed by the Government of India and receive subsidy under the NBS Scheme.

4. The petitioner's premises were inspected on 20.12.2023 and 21.12.2023, whereupon an inspection report came to be prepared. Based on this report, a show cause notice dated 03.01.2024 came to be issued. However, a copy of the inspection report was not shared with the petitioner. Consequently, the petitioner filed writ petition being W.P.(C) 1586/2024 before this Court. However, even before the said writ petition could be taken up, a copy of the inspection report was shared with the petitioner rendering the said writ petition infructuous.

5. The petitioner filed another writ petition being W.P.(C) 2898/2024 before this Court being aggrieved by the fact that prior to expiry of the time afforded to the petitioner to file a response to the show cause notice, an order came to be passed by the Department of Fertilizers ('hereinafter referred as 'the DoF') on 23.02.2024 removing the petitioner from the NBS Scheme. The aforesaid writ petitions were disposed of *vide* order dated 28.02.2024. The same reads as under:-

"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."

6. As is evident from a perusal of the above order, the respondents themselves stated, on instructions, that the termination order shall be kept in abeyance, pending issuance of a reasoned order upon consideration of the petitioner's reply to the show cause notice.

7. Pursuant thereto, an order dated 13.03.2024 came to be issued by the



DoF removing the petitioner from the NBS Scheme. The same, *inter-alia*, records as under:

“WHEREAS from the records submitted by the inspection team and photographs, the explanation submitted by the manufacturing unit- M/s Sai Fertilizers Pvt Ltd to the Show Cause Notice is not satisfactory.

WHEREAS, M/s Sai Fertilizers Pvt Ltd vide their letter dated 06.03.2024 requested for a personal hearing before the Competent Authority. However, after carefully considering all the facts contained in their response to the Show Cause Notice for which an ample of opportunity was already given to them in the interest of Natural Justice and also in compliance of directions of Hon'ble High Court and also considering other facts and circumstances involved therein, the undersigned has arrived to a well considered conclusion that the personal hearing shall serve no additional purpose, as the petitioner has already submitted his version of the facts and the matter may be decided on basis of the facts available on records which shall meet the ends of justice. Even, the Hon'ble High Court has left the issue of giving and an oral hearing to the petitioner on the discretion of this department/respondent subject to relevant regulations. The only point on which the Hon'ble Court laid emphasis was that "It is expected that the respondents will pass a reasoned Order" The principles of natural justice has already been applied in this case and the response submitted by the petitioner is sufficient to decide upon the matter, it was felt that no personal hearing was necessary in this case.

WHEREAS, M/s Sai Fertilizers Pvt Ltd is a NBS registered Unit and receives fertilizer Subsidy. NBS registered Units must comply with the Department of Fertilizers Pvt Ltd guidelines dated 21.09.2022 and 08.06.2023 and other Orders issued time and again by the Department and FCO 1985 provisions.

Therefore, keeping in view all the facts and circumstances involved in the instant matter including the reply given by the petitioner to the Show Cause Notice dated 03.01.2024, the following orders are passed:

ORDER

The Department of Fertilizers hereby removes M/s Sai Fertilizers Pvt Ltd from Nutrient Based Subsidy Policy with immediate effect.

This is further ordered to serve a copy of this Order to M/s Sai Fertilizers Pvt Ltd, Kharagpur, West Bengal immediately.

Sd/-



(Neeraja Adidam)
Special Secretary to the Government of India”

8. The above decision impelled the petitioner to file yet another writ petition being W.P.(C) 6667/2024 before this Court, whereupon the following order came to be passed on 10.05.2024:

“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.”*

9. Thereafter, the petitioner appeared before the “Neutral Officer” for the hearing scheduled on 29.05.2024 [in terms of the directions contained in the aforesaid order dated 10.05.2024 passed in W.P.(C) 6667/2024] and presented oral arguments. At the same time, the petitioner also filed a representation with the DoF on 15.05.2024 and 20.04.2024 for release of undisputed dues of subsidy payments. Since the above representation/s remained unaddressed, the petitioner filed a writ petition being W.P.(C) 8191/2024 before this Court, which came to be disposed of *vide* order dated 30.05.2024 in the following terms:



“1. The Petitioner has approached this Court with the following prayer:-

“a) Issue a writ of Mandamus or any other appropriate writ, order or direction in the nature of Mandamus, directing the Respondent to release the undisputed subsidy payments due to the petitioner from the 4th Week of January 2024 to 2nd week of May, 2024 totalling to INR 4,90,62,417 along with interest.

b) Any other relief, order or directions which this Hon'ble Court considers just and fit in the facts and circumstances of the case and in the interest of justice.”

2. Learned Senior Counsel for the Petitioner states that at this juncture he would be satisfied with a direction to the Respondents to consider the representation of the Petitioner within a period of 10 days from today since the survival of the Petitioner depends upon the refund.

3. The Respondents are directed to consider the representation of the Petitioner regarding the undisputed amount which is due and payable within a period of 15 days from today.

4. It is made clear that this Court has not made any observation on the merits of the case.

5. The petition is disposed of along with pending application(s), if any.

10. Subsequently, by an Office Memorandum dated 07.06.2024, representation of the petitioner was purportedly disposed of in terms of the afore-mentioned order dated 30.05.2024 in the following terms:

*“F.No.19011/4/2024-SSP
Ministry of Chemicals and Fertilizers
Department of Fertilizers*

*ShastriBhawan, New Delhi
Dated 7th June 2024.*

Office Memorandum

Subject: Hon'ble High Court of Delhi Order dated 30.05.2024 in CM APPL.33591/2024 (Exemption) W.P.(C) 8191/2024.

The undersigned is directed to forward herewith a copy of Judgment dated 30.5.2024 given by Hon'ble High Court of Delhi in W.P.(C) 8191/2024 and to inform hereby that M/s Sai Fertilizers Pvt Ltd was



2026:DHC:1763



removed from NBS vide this Department's Order dated 13.03.2024.

2. *In this regard, the cut off date for payment of claims to M/s Sai Fertilizers Pvt Ltd under the NBS scheme for an undisputed period may be considered till 13.03.2024, i.e the date on which it was removed from NBS scheme. The further period (post removal date) may be considered a disputed period for settlement of claims subject to outcome of the personal hearing before the neutral officer.*

3. *FS division is therefore requested to take necessary action in this regard and consider the representation of M/s Sai Fertilizers Pvt Ltd within 15 days from the Order dated 30.05.2024 under intimation to SSP division.*

Encl: As above.

*(Dalbir Singh)
AC (Movt.) & SSP
Ph- 23385119*

To,

*The Director,
FS Division,
DoF.*

Copy to: M/s Sai Fertilizers Pvt Ltd, Kharagpur, West Bengal."

11. The abovementioned Office Memorandum has been assailed by the petitioner in W.P.(C) 9060/2024. It is contended therein that the DoF has made an arbitrary bifurcation by treating dues prior to 13.03.2024 as 'undisputed' and dues post 13.03.2024 as 'disputed'. It is urged that the same overlooks the scope and import of the order dated 10.05.2024 passed in W.P.(C) 6667/2024, which set aside the order of the DoF dated 13.03.2024.

12. On 24.07.2024, the petitioner was communicated with an "Oral Hearing Report" along with a covering letter dated 24.07.2024. The same reads as under:

*"F.No.19011/4/2024-SSP
Government of India
Ministry of Chemicals and Fertilizers
Department of Fertilizers*

*Shastri Bhawan, New Delhi
Dated 24th July, 2024.*



To
Shri Nikhil Modi
Director,
M/s Sai Fertilizers Pvt. Ltd.
Kolkata, West Bengal

Subject: Forwarding of Report of Oral Hearing granted by Neutral officer to M/s Sai Fertilizers Pvt. Ltd. on its removal from NBS Policy.

As per Hon'ble High Court of Delhi Order dated 10.5.2024 in Writ Petition No.W.P.(C) 6667/2024 & CM Appl. 27721/2024 between M/s Sai Fertilizers Limited Vs UOI, Ms Aneeta Meshram, Additional Secretary was nominated as Neutral Officer to provide personal/oral hearing to M/s Sai Fertilizers Limited. Personal hearing held on 29.5.2024.

2. Neutral Officer vide findings of the Oral Hearing Report has upheld DoF's order dated 13.3.2024 stating that M/s Sai Fertilizers Pvt. Ltd, Manufacturer of SSP has been rightly removed from the NBS Policy.

3. A copy of Oral Hearing Report submitted by Neutral Officer is being forwarded for information.

*(Dalbir Singh)
AC (Movt.) & SSP
Ph-23385119."*

13. The aforesaid communication along with the accompanying "Oral Hearing Report" has been assailed by the petitioner in W.P.(C) 11099/2024. The operative portion of the "Oral Hearing Report" is as under:

"ANALYSIS

1.The written statement of the petitioner and the counter reply of SSP Division, DoF along with various related guidelines and documents were examined in detail.

2. The petitioner has raised his points in two parts: preliminary objection on the jurisdiction and on the fabrication of the inspection report and second charge wise reply to the show cause notice.

A. Preliminary Objection

3.The main point of Sai Fertilizers is regarding the validity of the Guidelines, validity of the inspection, validity to remove from NBS,



validity of the charges covered by FCO.

4.As clarified by the SSP division, State government was informed about the inspection and was requested to take legal and punitive action under FCO 1985, EC Act and relevant IPC sections. The details of team members were clearly mentioned in the DO letter of Additional Secretary, DoF addressed to CS, Govt. of West Bengal dated 18 December 2023. Further, a DO dated 18 Deecmeber 2023 was sent to Director Agriculture also for necessary action under FCO during the inspections. The Officer from the Agriculture Department of the State Government was present during the inspection and has issued stop sale notice also with endorsement to SSP flying squad, DoF. Further, order dated 13 March 2024 has also been forwarded to Chief Secretary for further necessary action. All correspondence with the State Government of West Bengal is annexed. (Annexure 4). The inspection was done by the team authorized by the Department of Fertilizers; hence there is no question on the jurisdiction of the team to do the inspection.

4. It is evident that the petitioner is wrongly interpreting the law and the guidelines and is mixing up the nature of inspections carried out under FCO than with the nature of inspections carried out by the Department of Fertilizer.

5.The petitioner has questioned the guidelines and stated that DoF guidelines dated 21.09.2022 are perverse to the statute and moreover there is no procedure prescribed for removing the manufacturer from NBS. The petitioner company was inducted into Nutrient Based subsidy policy as per the guidelines of the Department. The registration of a company as a manufacturer/dealer/distributor of Fertilizer is carried out under FCO. Only those FCO registered units can apply for induction into NBS as per the Department guidelines. Thus petitioner company are required to comply with all provisions of FCO-1985 and DoF guidelines dated 21.09.2022 and other guidelines applicable to the industry as issued by the Department of Fertilizers time to time. FCO-1985 is an umbrella law which is to be complied by the units along with SSP guidelines. Provisions of FCO -1985 are inherent part of DoF guidelines. FCO compliance is precondition to claim subsidy under the guidelines. Any violation of FCO-1985 or DoF guidelines, the Department of Fertilizers reserves the right to remove the petitioner from Nutrient Based subsidy policy as per guidelines. It is to be mentioned that no action has been taken by DoF under FCO against the petitioner. SSP division has clarified the State government was informed about the inspection and was requested to take legal and punitive action under FCO 1985, EC Act and relevant IPC sections. The Officer from the Agriculture Department of the State Government was present during the inspection and has issued stop



sale notice also with endorsement to SSP flying squad, DoF. Further, order dated 13 March 2024 has also been forwarded to Chief Secretary for further necessary action. The petitioner is only removed from NBS and not eligible to receive subsidy from the Government of India and claim bills by entering in iFMS. The petitioner is saying they are not bound to follow such guidelines. On the one hand, the petitioner is inducted into NBS by way of guidelines and on the other hand the petitioner is quoting they are not obliged to follow the guidelines.

6. Government of India provides subsidy the fertilizers manufacturers/importers of fertilizers to ensure the availability of quality fertilizers to the farmers at affordable rate to attain the overall objective of food security of the country. The inspections of DoF are carried out on the basis of executive order issued by DoF with the approval of Competent Authority. DoF has to monitor that no irregularities are in the functioning of unit as these units receive huge fertilizer subsidies. SSP is a decontrolled fertilizer and Government of India provides subsidy under Nutrient Based Subsidy (NBS) scheme to the SSP manufacturers with the objective that SSP manufacturers will supply urea to the farmers at an affordable price. Further, as specified under Government of India (Allocation of Business) Rules, 1961, management of subsidy for controlled as well as decontrolled fertilizers is one of the main works allocated to the Department of Fertilizers (DoF). In this regard, it has been observed that The Fertilizers (Control) Order 1985 (FCO-1985) regulates the sale, the price and the quality of fertilizers in the Country. FCO-1985 contains specifications of fertilizers, procedures for authorization or registration of dealers/retailers/manufacturers, methodology for sampling and quality testing, fixation of MRP etc. However, FCO does not envisage the provision for subsidy payments for any kind of fertilizer. Various different grades of P&K fertilizers are included in FCO-1985. Companies may manufacture any grade of P&K fertilizers in compliance of provisions of FCO- 1985 and any other applicable rules regulations. However, subsidy is not admissible for all kind of fertilizers included under the FCO-1985.

7. Eligibility for subsidy payment is decided as per provisions notified/issued by the Department of Fertilizers (DoF) from time to time with the approval of the Competent Authority. Further, as stated above, DoF is empowered under Government of India (Allocation of Business) Rules, 1961 to issue such guidelines for the management of the subsidy payment.

8. Accordingly, DoF has issued guidelines from time to time with the approval of Competent Authority to regulate the subsidy payments. The guidelines dated 21.09.2022 by which all the existing guidelines were



consolidated and rationalized and in supersession of all earlier guidelines/circulars/OM's related to different aspects of SSP Industry. The guidelines clearly mention that the manufacturer should be registered under FCO which inherently implies that all provisions of the FCO are to be complied by the manufacturer. Guidelines of the subsidy payment and FCO-1985 cannot be read separate and in contradiction of each other and it has to read in totality, FCO being the umbrella law. In order to get the subsidy, it is mandatory for the SSP manufacturing units including the petitioner company to comply not only with the provisions of FCO-1985 but also with the provisions of the guidelines issued by the DoF. Therefore, in case of any violations of FCO-1985 or DoF guidelines or both, DoF reserve the right to stop payment of subsidy to any fertilizer manufacturing entity.

9. Hence both FCO-1985 and the guidelines are to be mandatorily be complied with by the SSP manufacturing units in order to avail the subsidy NBS-regime. Hence the contention of Sai Fertilizers regarding the validity of the guidelines and the inspections carried out doesn't hold ground and it has to comply with all the provisions to avail of the subsidy under NBS.

10. Guidelines dated 21.09.2022 for management of subsidy on SSP fertilizers were in place for more than one year before the inspection was carried out in December 2023. Further, after issue of any guidelines if any stakeholder faces any difficulty then it may approach to the Department of Fertilizers with justification to extend the deadline of implementation of guideline/change in guideline etc. Petitioner's SSP unit was also registered for getting the subsidy under the said guidelines. Therefore, petitioner was very well versed with the provisions of the guidelines before the inspection. However, the petitioner had neither represented against any provision of the guidelines nor informed about the balanced quantity of filler which it has used or any other conditions of the guidelines which it was not able to meet nor it had sought extension of time to meet the deadlines fixed under the guidelines for the minimum automation required for SSP plants after the issues of guidelines. Accordingly, it may be stated that petitioner has not complied with the guidelines of the DoF.

11.Regarding fabrication of the Inspection report, Sai Fertilizers has alleged that inspection report has been fabricated and the report which was handed over to them at the site is very much different from the inspection report which was the basis of the Show Cause notice. SSP division has clarified that all the relevant data from the unit was collected and compiled. Due to paucity of time, the detailed report was prepared by the SSP squad and submitted after the completion of the visit.

12.One allegation made by the petitioner is that the expenses for



boarding/lodging/transport were borne by the company and for which they have attached the bills. No counter reply has been given by the Division. SSP Division may examine and seek clarification from the inspection team members and take appropriate action on the matter.

B. Charges in the Show Cause Notice:

13. Apart from analysis of pre objections, the charge wise analysis is done below. Since the petitioner has raised the validity of charges with regard to the FCO and the guidelines, the charges are analysed in the totality of FCO and guidelines in view of the overall analysis given above with regard to interplay of FCO and the department guidelines,

14. **First set of charges** are related to non compliance of guidelines like fillers, booking export grade on IFMS for claiming subsidy, automation, not booking losses on actual basis and claiming unauthorised subsidy.

15. As per para 4.B.III E of the DoF guidelines dated 21.09.2022, no fillers are allowed to be added in the SSP produced. The guidelines are applicable to all SSP units registered under Nutrient Based Subsidy (NBS) Scheme. As per provisions of Nutrient Based Subsidy guidelines, M/s Sai Fertilizers Pvt. Ltd. Has to comply with the provisions given in guidelines dated 21/9/2022. The mandate of Department of Fertilizers is to release the subsidy as per provisions stipulated in various guidelines. These guidelines are effective from the date of issuing/signing. The unit has used the fillers and it has been accepted in its written statement also If there was any difficulty with regard to implementation of the clauses related to fillers, there was no representation from their side. The petitioner had neither represented against any provision of the guidelines nor informed about the balanced quantity of filler which it has used. Similarly is the charge of automation which it was not able to meet nor it had sought extension of time to meet the deadlines fixed under the guidelines for the minimum automation required for SSP plants after the issues of guidelines. As per DoF guidelines dated 21.09.2022, the phase I and Phase II automation has to be completed within 01 year (Phase I within 6 months and phase II within one year). Accordingly, it may be stated that petitioner has not complied with the guidelines of the DoF.

16. The company is booking export grade SSP in the iFMS portal along with subsidized grade SSP to claim unauthorized subsidy. The purpose of iFMS is for release of subsidy which is done after the sale on PoS, hence it is not proved that the unit has booked export grade SSP for subsidy. Since IFMS is only for claiming subsidy and related information related to the stock of domestic SSP, SSP division may examine the requirement of capturing the export grade SSP data on IFMS and accordingly make



suitable amendment in the IFMS so that it doesn't capture any data related to export grade SSP. The unit should intimate separately regarding stocks adjustment for export and not book the same under iFMS along with subsidized grade SSP.

17. The unit has booked a loss of 1% for all months as per records submitted by the unit. As per FCO-1985 the moisture content for Single Super Phosphate Powdered (PSSP) is 12% maximum and for Single Super Phosphate Granulated (GSSP) is 5% maximum. The difference is 7% which are the losses. However in some cases the moisture of PSSP ranges from 9-10%. So losses is around 3-5%. However as can be seen from the stock register of the unit, the losses are not booked on daily basis and the unit has booked a loss of 1% for all the months submitted in the record. No satisfactory justification has been given by the unit.

*18. **Second set of charges** are related to stock management, record related to stock, quality management and inventory/material management in the premises. The points raised in their representation and the counter reply of DoF proves that the all charges except one against the petitioner are proved and there is violation of various provisions of FCO-1985. The charge related to batch wise sampling before dispatch of finished goods is not proved and sampling is being done as proved by the documents provided by the petitioner.*

19. As per Clause 21A of FCO-1985, every manufacturer shall, in order to ensure the quality of their product, possess minimum laboratory facility, as may be specified from time to time by the Controller. From the above, every manufacturer should possess minimum lab facility ensure checking of products and material and log book should have been maintained and signed by lab representative on daily basis. Therefore, the reply submitted by unit is not acceptable and violative of Clause 21 A of FCO-1985.

20. The petitioner is in clear violation of clause 35 (3) of FCO-1985 by not maintaining separate record books for export grade SSP and subsidized grade SSP. It has accepted that the stock information is available on IFMS. As per section 2 (kk) (III) of FCO-1985 Industrial purposes mean the use of fertilizer for purposes other than fertilization of soil and increasing the productivity of crops. As per Clause 35(3) of FCO-1985 which states that "Where a State Government, a manufacturer, an importer and a pool handling agency holds valid certificates of registration for sale of fertilizers in, wholesale or retail or both and also for sale for industrial use, he shall maintain separate books of accounts for these two or three types of sales made by him. The petitioner stated that they are only exporting SSP and as such does not come under industrial use. The petitioner has a wrong understanding of section 2(kk) (III) of



FCO.

21. *The petitioner has challenged the mismatch of stock and not proper segregation and stacking of the material in the premises. The petitioner has claimed that it not possible to verify the stock physically in less than six hours. The petitioner has further claimed proper segregation of the materials and stacking of the stock in the premises and has submitted the photographs of the stock kept in the premises.*

SSP division has replied that there is mismatch is -1516 MT for Green SSP, +26.30 MT for SSP (G+Z), -227.60 MT for GSSP (Export grade) and -505.831 MT for SSP (P&B). The inspection teams count the number of bags. The number of bags stacked in a row and quantity of fertilizer in the specific bag is also calculated and on the basis of which total physical stocks are noted during inspection. The inspection team members are to take note of physical stocks. The quantity of each bag of material is known and from the total area, physical quantity of SSP stocks is calculated by the inspection team. DoF has charged the petitioner that at the time of inspection there was no proper segregation of raw material and Green SSP inside the plant premises and no proper segregation of storage of subsidized SSP and export quality SSP and both kept at same place and intermixed with each other. The photographs were submitted by the inspection team to the department. From the photographs of the unit, it is evidently clear that there is no proper segregation of raw material and Green SSP as well no proper segregation of subsidized SSP and export SSP and as per FCO stocks are not kept in proper stacking.

22.As far as mismatch of stock and segregation of stock and stacking is concerned, statement of both the petitioner and DoF are self-contradictory. If Sai Fertilizers has kept the stock segregated and in proper stacking as claimed by them, then it wouldn't have been difficult to count the stock as per row and area by the inspection team. SSP division, DoF has on one hand has charged the company that there was no segregation, no stacking and material was put haphazard, then how was it possible to count the exact quantum of the material in a limited time. Looking at the overall picture, it is clear that the material is kept in a haphazard manner and not complying with the FCO provisions. However as far mismatch is concerned, SSP division DoF statement is accepted since fairly good estimate of mismatch can be worked out even if the numbers may not be exact. Sai Fertilizers cannot claim both that its stock keeping is proper stacked and segregated and DoF is not able to count the exact mismatch in the stock. Hence the charges related to stock keeping also stands proved.

23. *As per clause 25(1) of FCO, no person shall, except with the prior*



permission of the Central Government and subject to such terms and conditions as may be imposed, by such Government shall use fertilizer for purposes other than fertilization of soils and increase in productivity of crops; The purpose of the subsidy is to provide the fertilizers timely to the farmers at affordable prices. Mismatch in the stocks indicate the non-compliance of the end objectives of the NBS subsidy policy by the Unit. Any violation of any provision with regard to the stock management defeats the very purpose of end objective of NBS subsidy policy with regard to the availability of adequate fertilizers to the farmers at affordable prices on time.

FINDINGS:

1. The petitioner in its written submission has pointed out various provisions of the FCO-1985 and DoF guidelines and has raised objections on the legal validity of the inspection carried out by DoF. In this regard, it has been observed that The Fertilizers (Control) Order 1985 (FCO-1985) regulates the sale, the price and the quality of fertilizers in the Country. FCO-1985 contains specifications of fertilizers, procedures for authorization or registration of dealers/retailers/manufacturers, methodology for sampling and quality testing, fixation of MRP etc. However, FCO does not envisage the provision for subsidy payments for any kind of fertilizer. Various different grades of P&K fertilizers are included in FCO-1985. Companies may manufacture any grade of P&K fertilizers in compliance of provisions of FCO-1985 and any other applicable rules regulations. However, subsidy is not admissible for all kind of fertilizers included under the FCO-1985.

2. Eligibility for subsidy payment is decided as per provisions notified/issued by the Department of Fertilizers (DoF) from time to time with the approval Competent Authority. Further, as stated above, DoF is empowered under Government of India (Allocation of Business) Rules, 1961 to issue such guidelines for the management of the subsidy payment. The guidelines issued by DoF on 21.09.2022 wherein all the existing guidelines have been consolidated and rationalized in supersession of all earlier guidelines/circulars/Oms related to different aspects of SSP Industry is one of the guidelines issued by DoF for management of subsidy on SSP Fertilizer.

3. The registration of a company as a manufacturer of Fertilizer is carried out under FCO, Only those FCO registered units can apply for induction into NBS as per the Department guidelines. Thus petitioner company is required to comply with all provisions of CO-1985 and DoF guidelines dated 21.09.2022 and other guidelines applicable to the industry as issued by the Department of Fertilizers. FCO-1985 is an umbrella law to be



complied by the units along with SSP guidelines. The SSP guidelines inherently includes FCO-1985 provisions it being a precondition to avail the subsidy under the DoF guidelines. In case of any violation of FCO-1985 or DoF guidelines, the Department of Fertilizers reserves the right to remove the petitioner from Nutrient Based subsidy policy as per guidelines. The petitioner was not tried under FCO by the Department. No action has been taken by DoF under FCO against the petitioner. As SSP division has clarified the State government was informed about the inspection and was requested to take legal and punitive action under FCO 1985, EC Act and relevant IPC sections. Further, order dated 13 March 2024 has also been forwarded to Chief Secretary for further necessary action. The copy of the order of removal from NBS dated 13 March 2024 has been forwarded to Chief Secretary, West Bengal for further necessary action. The petitioner is only removed from NBS and not eligible to receive subsidy from the Government of India and claim bills by entering in iFMS.

4. In view of the above, in order to get the subsidy, it is mandatory for the SSP manufacturing units including the petitioner company to comply with the guidelines issued by the DoF of which various FCO provisions are inherent part. Therefore, in case of any violations of FCO-1985 or DoF guidelines, DoF reserve the right to stop payment of subsidy to any fertilizer manufacturing entity.

5. Inspection team of DoF has found various irregularities in the units related to SSP subsidy guidelines and FCO violations mainly related to stock keeping and management. Further, replies submitted by the petitioners during the hearing and also submitted in written have not been satisfactory and justifiable and it has violated the guidelines dated 21.09.2022 issued by the DoF. Compliance of DoF guidelines is necessary to claim the government subsidy.

6. The petitioner has questioned the various clauses of FPO being violated not been specifically mentioned in the show cause notice however in the counter reply DoF has clearly mentioned the FPOs clauses. Though, it does not have any impact on the merit of the case, it is advised that the division may consider putting clauses in the notice for better clarity. It is to be mentioned that Government pays huge subsidy to the SSP manufacturers with the interest of farmers and some technical point of not mentioning the clauses in the notice cannot be taken advantage of in lieu of the substantive charges involved. Government of India provides subsidy on the fertilizers to manufacturers/importers of fertilizers to ensure the availability of quality fertilizers to the farmers at affordable rate to attain the overall objective of food security of the country.



7. In view of the above, M/s Sai fertilizers Pvt Ltd, manufacturer of SSP has been rightly removed from the NBS policy. The petitioner is not eligible to receive subsidy from the Government of India and claim bills by entering in IFMS. As far as action under FCO violations is concerned, the matter has already been referred to the State Government to take further appropriate action. Additionally, the petitioner may again apply for availing the subsidy under NBS policy subject to fulfillment of all the conditions stipulated under the guidelines of the DoF and it shall be considered by the concerned division on merit.

Accordingly, the analysis and findings in the matter on the basis of the oral hearing given to the petitioner M/s Sai Fertilizers in compliance of the Hon High Court order dated 10 May 2024 is hereby forwarded for necessary action.”

14. Vide order dated 12.08.2024 passed in W.P.(C) 11099/2024, this Court, *inter-alia*, ordered as under:

“8. Paragraph 7 of the impugned decision, suggests that the Respondent are willing to consider Petitioner’s re-introduction into the NBS Scheme in case they were to apply afresh. Relying on this observation, Mr. Singh proposes that the Respondents should conduct a new inspection of the Petitioner’s premises to ascertain compliance with the Scheme. Building on this, he urges the Court to consider establishing an interim arrangement for the Petitioner, pending a final decision regarding their reinstatement into the NBS Scheme. This approach would ensure that the Petitioner’s operations can continue without disruption, while the compliance verification process is underway.

9. In the opinion of the Court, the suggestion given by Mr. Balbir Singh, has merit since the Respondent is willing to consider the Petitioner for reintroduction to the said Scheme, in case the Petitioner were to make a fresh application for the same and subject to fulfilment of all pre-requisites. However, considering the alleged violations, it is prudent for the Respondents to undertake a comprehensive re-inspection of the Petitioner’s premises. This re-inspection will ensure that the Petitioner now complies fully with the NBS scheme’s requirements and determine their current eligibility.

10. Let inspection be carried out by the Respondent within a period of two weeks from today and the report be placed on record for the perusal of the Court. It is made clear that the Petitioner shall bear the entire cost related to the inspection. The inspecting team may, if deemed necessary, also videograph the inspection and take photographs for which the expenses shall also be borne by the Petitioner.



11. These directions are without prejudice to the rights and contentions of the Respondent. The Court has not made any comment on the merits of the case. The possibility of the Petitioner being reinstated into the NBS Scheme following the re-inspection as directed, or whether such reinstatement necessitates a new application, will be deliberated upon during the subsequent hearing.”

15. Thereafter, the respondent carried out a fresh inspection on 18.08.2024 at the petitioner’s site through a team comprising of the official/ s of Project and Development India Ltd. (PDIL), the DoF and the Fertilizer Association of India (FAI). After inspecting the site, it was concluded that the petitioner was compliant with the NBS Scheme and therefore, eligible to be re-introduced into the same. Thereafter, taking note of the same, *vide* order dated 05.09.2024 passed in these proceedings, this Court ordered as under:

“4. In view of the urgency expressed by the counsel for Petitioner, the writ petition is called on board today itself.

5. On 12th August, 2024, the Court had directed the Respondent to re-inspect the Petitioner’s premises and report on the Petitioner’s compliance with the requirements of the Nutrient Based Subsidy (NBS) Scheme, and accordingly determine their eligibility under the NBS Scheme.

6. In terms of the above directions, the investigation has been carried out and inspection report, along with affidavit of compliance, has been filed by Respondent No. 1. The relevant portion of the inspection report is reproduced hereunder:

“10. Joint team of PDIL, DOF and FAI, approved by Department of Fertilizer, visited Sai Fertilizers Pvt. Ltd. on 18 .8.2024.

The observation of the team is as under:-

As per the standard practice and DoF Guidelines dated 21/09/2022 and provisions made in FCO. The joint team has technically inspected the entire unit for production of PSSP and GSSP 400 TPD that is 132000 MT per Annum. The finding of joint team is given below.

a.) Unit has adequate equipment’s / Machineries/other facilities to meet the requirement of 400 TPD of PSSP and GSSP as per the guidelines.

b.) Unit has already complied the various technical observations like:



M/s Sai Fertilizers Pvt. Ltd., Kharagpur (WB)		DoF/PDIL/FAI/FFS/2024-	0
Technical Inspection Report for re-induction of SSP Unit		25	
		(TIR - 10)	
	DOCUMENT NO	REV	
		SHEET 4 OF 4	

Minimum Automation required for phase- I.

- i. Sulphuric Acid Control valve and Flow Transmitter.
- ii. Dilution Water Control Valve and Flow Transmitter.
- iii. Digital Rock Feeder belt Weighers.
- iv. Mixer temperature indicator/transmitter.

Phase- II


- i. PLC based control system with control room.
- ii. Stack Monitors as per CPCB SPCB guidelines (Particulate matter/ Fluorine)
- iii. Dryer inlet and Outlet Gas Temperature.
- iv. Emission Control System.

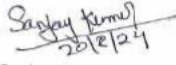
Phase- III

- i) Accreditation of NABL Lab is under process (Training completed and consultant hired) and may be completed by September 2024.
- c) The housekeeping of the plant is satisfactory.
- d) Proper Stacking of PSSP and GSSP is observed during inspection.
- e) The Quality Control facilities of the unit is adequate to meet the provisions given in FCO.
- f) The Log Books including Raw materials, finished product and Laboratory Registers all are in order.
- g) During the inspection the Plant is under Operation.
- h) Unit has also furnished requisite documents i.e Copy of FRC, Consent to Operate, GST Registration Certificate. License to work a factory, Memorandum and Article of association, Certificate of Incorporation, Annual report for the year 2022-2023 etc.

11. Conclusion:

Since, unit has complied the all the observations of SSP squad & having consent to operate (CTO) from State Pollution Control Board, West Bengal vide their consent letter no. C0113634, dt. 26.04.2024 with validity up to 31.03.2027. Hence, unit is technically competent to produce 132,000 MTPY of PSSP & GSSP.


 Dr. S.S. Tiwari
 डॉ. एस.एस. तिवारी / Dr. S.S. Tiwari
 निदेशक / HOD (SSP & QC Audit)
 प्रकल्प विकास एवं पर्यावरण विनिर्देशन सेवा
 Projects & Development India Ltd., Noida


 Sanjay Kumar
 DoF


 Mustafiz Hasan
 FAI

Asst. Commissioner (SSP)- Submitted for your kind perusal & n.a.

7. In light of the above, since the Petitioner is now compliant with the NBS Scheme, the Petitioners are eligible to be re-introduced into the NBS Scheme. Although, counsel for the Respondent had submitted that the Petitioner would be required to re-apply, however, counsel for Petitioner submits that there is no such requirement and the Petitioner can simply be re-introduced into the NBS Scheme.

8. The legal effect of the Petitioner being re-introduced to the NBS Scheme will be adjudicated at the later point of time. However, as of now, the Respondent is directed to re-introduce the Petitioner into the NBS Scheme. Consequently, the benefits under the NBS Scheme be extended to the Petitioner with effect from 9th September, 2024. Let the necessary notification to that effect be issued expeditiously.”

16. Accordingly, the respondent issued an Office Memorandum dated 10.09.2024 declaring the petitioner to be eligible for subsidy as per the



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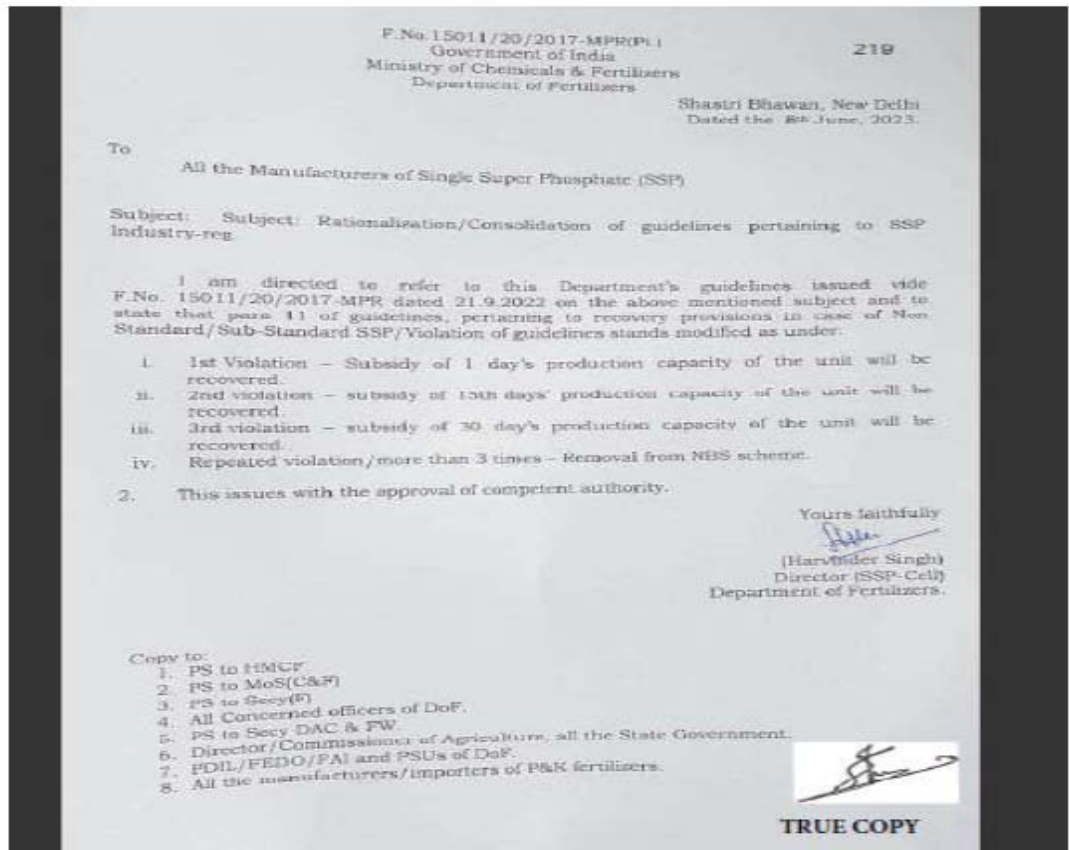


applicable guidelines / orders with effect from 09.09.2024.

17. In the above conspectus, since the petitioner has been re-introduced into the NBS Scheme with effect from 09.09.2024, the only effective controversy is the petitioner's entitlement to subsidy during the period 13.03.2024 to 09.09.2024.

18. In the above conspectus, learned senior counsel for the petitioner made the following contentions, as recorded in the order dated 05.08.2025:

"i. It is submitted that the impugned order, whereby the petitioner has been sought to be removed from the Nutrient Based Subsidy Scheme (NBS Scheme) is disproportionate and contrary to the respondent's own guidelines/ directions dated 08.06.2023. It is pointed out that in terms thereof, in the event of a first violation, the maximum penalty to which the petitioner could have been subjected was "recovery of subsidy equivalent to one day's production capacity of the petitioner's unit". The said communication dated 08.06.2023 reads as under:-





ii. Secondly, it is submitted that although the order dated 13.03.2024, which has been previously passed by the officials of the respondent, was set aside by this Court on 10.05.2024 by way of the impugned order, the previous order dated 13.03.2024 has been sought to be reinstated despite the same having been expressly set aside. It is further submitted that the concerned hearing report appended to the impugned communication dated 24.07.2024 does not disclose the names of the officers who granted/ conducted the hearing, nor does it contain any signatures. As such, the hearing report being unsigned, could not have been acted upon for the purpose of passing any order against the petitioner, much less could have been utilised for the purpose of restoring the order dated 13.03.2024 which was set aside by this Court vide order dated 10.05.2024.

iii. Thirdly, it is submitted that the concerned guidelines of the respondent do not contain any provision for a surprised check. As such, the very basis for taking action against the petitioner is not based on any extant guidelines.

iv. It is submitted that whereas the unsigned hearing report seeks to find fault with the fact that the petitioner has not carried out the necessary automation, it has been wholly disregarded that the deadline for automation has been extended by the respondent/ department itself by way of subsequent orders inter alia order dated 30.04.2025, copy of which has been handed over during the course of hearing.

v. Lastly, it is submitted that when the surprise inspection was conducted on 21.12.2023, no sample whatsoever was tested and the outcome of the inspection is not borne out by any sample report intimated to the petitioner.”

19. In response, learned counsel for the respondent, while conceding that the violation pursuant to which the petitioner was removed from the NBS Scheme was the “first violation” of the petitioner, contended that the action has been taken against the petitioner by taking recourse to Clause 31 of the FCO. This was duly recorded in the order dated 03.09.2025 passed by this Court in the present proceedings.

20. It is further emphasized that the “Oral Hearing report” (appended with the impugned cover letter dated 24.07.2025) records that the petitioner has committed a series of serious violations which were sufficient to remove the



petitioner from the NBS Scheme.

21. Learned counsel for the respondent has also controverted the submissions on behalf of the petitioner to the effect that the order dated 13.03.2024 passed by the DoF has been set aside by this Court on 10.05.2024. It is contended that this Court *vide* its order dated 10.05.2024 did not reinstate the petitioner into the NBS Scheme and therefore, the said order does not detract from the fact that the petitioner is not entitled to any subsidy with effect from the date of issuance of the said termination order (i.e.,13.03.2024).

FINDINGS AND CONCLUSION

22. On a perusal of the record, this Court finds that the exercise conducted by the respondent in the aftermath of the order dated 10.05.2024 passed by this Court in W.P(C) 6667/2024 suffers from considerable procedural and substantive lacuna. This is on account of the following circumstances: -

22.1. Inexplicably, the “Oral Hearing Report” rendering final decision on the merits of the case and finding justification in the removal of the petitioner from the NBS Scheme, does not bear any name/signature/designation of the officer/authority who prepared it. Also, it transpires that the concerned hearing officer, after conclusion of the hearing, obtained certain replies / submissions from the DoF on 06.06.2024 and 11.07.2024. This is duly recorded in the “Oral Hearing Report”. Evidently, the petitioner was heard on 29.05.2024 and had no inkling about the further documents / submissions sought from the DoF.

22.2. The covering letter, whereby, the “Oral Hearing Report” was forwarded to the petitioner purports to “uphold” the DoF’s order dated



13.03.2024. The said order dated 13.03.2024 was set aside by this Court *vide* order dated 10.05.2024, in the following terms:

“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.”

As such, it is quite incongruous for the impugned communication dated 24.07.2024 and also the “Oral Hearing Report” appended thereto to “upheld” the order dated 13.03.2024.

22.3. Significantly, the “Oral Hearing Report” records at various places that the petitioner was neither tried nor any action had been taken against it under the FCO. The relevant extracts of the “Oral Hearing Report” where this aspect had been adverted to are reproduced hereunder:

“SSP Division, DoF counter-reply:

The petitioner stated that DoF guidelines dated 21.09.2022 are perverse to the statute and they are not obliged by any way what so ever to follow such guidelines. The petitioner company was inducted into Nutrient Based subsidy policy as per the guidelines of the Department. The registration of a company as a manufacturer/dealer/distributor of Fertilizer is carried out under FCO. Only those FCO registered units can apply for induction into NBS as per the Department guidelines. Thus petitioner company are required to comply with all provisions of FCO-1985 and DoF guidelines dated 21.09.2022 and other guidelines applicable to the industry as issued by the Department of Fertilizers time and again. FCO- 1985 is an umbrella law to be complied by the units along with SSP guidelines. The SSP guidelines are not contradictory to any provisions of FCO-1985. Any violation of FCO-1985 or DoF guidelines, the Department of Fertilizers reserves the right to remove the petitioner from Nutrient Based subsidy policy as per guidelines. The petitioner was not tried under section 31 of FCO. No action has been taken by DoF under FCO against the petitioner. The petitioner is only removed from NBS and not eligible to receive subsidy from the Government of India and claim bills by entering in iFMS. The petitioner is free to run their business as per FCO. The petitioner is saying they are not bound to follow such guidelines. On the one hand, the petitioner is inducted into NBS by way of guidelines and on the other hand



the petitioner is quoting they are not obliged to follow the guidelines. The observations of DoF on the violations by the petitioner company as cited in DoF Order dated 13.03.2024 is again reiterated.

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ANALYSIS

.....5. The petitioner has questioned the guidelines and stated that DoF guidelines dated 21.09.2022 are perverse to the statute and moreover there is no procedure prescribed for removing the manufacturer from NBS. The petitioner company was inducted into Nutrient Based subsidy policy as per the guidelines of the Department. The registration of a company as a manufacturer/dealer/distributor of Fertilizer is carried out under FCO. Only those FCO registered units can apply for induction into NBS as per the Department guidelines. Thus petitioner company are required to comply with all provisions of FCO-1985 and DoF guidelines dated 21.09.2022 and other guidelines applicable to the industry as issued by the Department of Fertilizers time to time. FCO-1985 is an umbrella law which is to be complied by the units along with SSP guidelines. Provisions of FCO -1985 are inherent part of DoF guidelines. FCO compliance is precondition to claim subsidy under the guidelines. Any violation of FCO-1985 or DoF guidelines, the Department of Fertilizers reserves the right to remove the petitioner from Nutrient Based subsidy policy as per guidelines. It is to be mentioned that no action has been taken by DoF under FCO against the petitioner. SSP division has clarified the State government was informed about the inspection and was requested to take legal and punitive action under FCO 1985, EC Act and relevant IPC sections. The Officer from the Agriculture Department of the State Government was present during the inspection and has issued stop sale notice also with endorsement to SSP flying squad, DoF. Further, order dated 13 March 2024 has also been forwarded to Chief Secretary for further necessary action. The petitioner is only removed from NBS and not eligible to receive subsidy from the Government of India and claim bills by entering in iFMS. The petitioner is saying they are not bound to follow such guidelines. On the one hand, the petitioner is inducted into NBS by way of guidelines and on the other hand the petitioner is quoting they are not obliged to follow the guidelines.

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Findings:-

.....3. The registration of a company as a manufacturer of Fertilizer is carried out under FCO. Only those FCO registered units can apply for



induction into NBS as per the Department guidelines. Thus petitioner company is required to comply with all provisions of CO-1985 and DoF guidelines dated 21.09.2022 and other guidelines applicable to the industry as issued by the Department of Fertilizers. FCO-1985 is an umbrella law to be complied by the units along with SSP guidelines. The SSP guidelines inherently includes FCO-1985 provisions it being a precondition to avail the subsidy under the DoF guidelines. In case of any violation of FCO-1985 or DoF guidelines, the Department of Fertilizers reserves the right to remove the petitioner from Nutrient Based subsidy policy as per guidelines. The petitioner was not tried under FCO by the Department. No action has been taken by DoF under FCO against the petitioner. As SSP division has clarified the State government was informed about the inspection and was requested to take legal and punitive action under FCO 1985, EC Act and relevant IPC sections. Further, order dated 13 March 2024 has also been forwarded to Chief Secretary for further necessary action. The copy of the order of removal from NBS dated 13 March 2024 has been forwarded to Chief Secretary, West Bengal for further necessary action. The petitioner is only removed from NBS and not eligible to receive subsidy from the Government of India and claim bills by entering in iFMS.

7. In view of the above, M/s Sai fertilizers Pvt Ltd, manufacturer of SSP has been rightly removed from the NBS policy. The petitioner is not eligible to receive subsidy from the Government of India and claim bills by entering in IFMS. As far as action under FCO violations is concerned, the matter has already been referred to the State Government to take further appropriate action Additionally, the petitioner may again apply for availing the subsidy under NBS policy subject to fulfillment of all the conditions stipulated under the guidelines of the DoF and it shall be considered by the concerned division on merit.”

The same position has also been reiterated by the respondent in paragraph 28 of its counter-affidavit, which reads as follows:

“28 . That the contents of Grounds E- E6 are wrong and denied. It is submitted that the Petitioner was not tried u/s 31 of the FCO because the Petitioner had not been suspended, barred or cancelled from carrying business. The Petitioner was only denied benefits of under the NBS. However, the Petitioner was free to not receive any subsidy and carry on business as per FCO order. Furthermore, the inspection team was constituted by the Dept. with the approval of the Competent Authority with (i) One DoF member, (ii) One PDIL member (iii) One SS(NA). The details of the same were mentioned in the letter of SS(NA) which addressed to the CS, Gov. of WB. The inspection team was constituted by an executive



order. The Petitioner has wrongfully quoted S. 28 (C) of FCO. The Petitioner is mixing up the nature of inspections carried on by the Dept. of Agriculture and that by DoF. Those carried out by DoF are based on executive order as DoF is responsible for monitoring irregularities in the functioning of the units that receive fertilizer subsidy. It is mandatory for SSP manufacturing units to adhere to the FCO- 1985 and the guidelines dt. 21.09.22 because the Petitioner is a registered NBS and is receiving subsidy . To continue receiving subsidy, the Petitioner must comply, giving the Dept. reserves the right to remove the Petitioner from NBS in case of non-compliance.”

As regard the aforementioned position taken by the respondent, it can further be noted that: -

22.3.1 The show cause notice itself, does not specifically make reference to any action being taken against the petitioner under the provisions of the FCO. Thus, the impugned order / action against the petitioner is beyond the ambit of the show cause notice issued to the petitioner. There can be no cavil to the legal position that if action was proposed to be taken against the petitioner by taking recourse to the provisions of the FCO, it was incumbent on the part of the respondent/s to specifically mention the same in the show cause notice, so as to enable the petitioner to respond thereto.

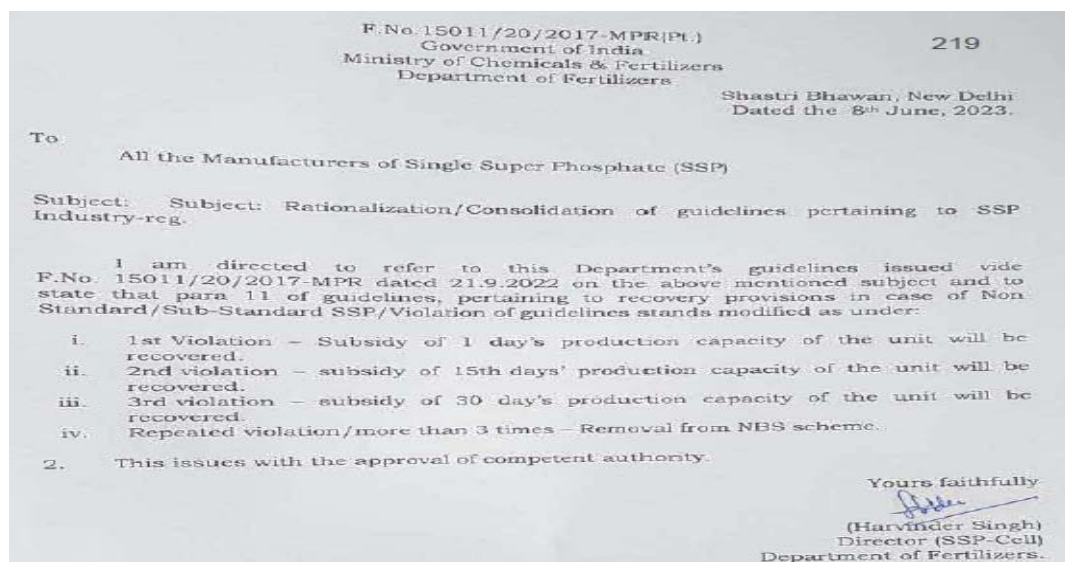
22.3.2. Despite the above, the respondent has sought to justify (in the hearing report and also during present proceedings) removal of the petitioner from the NBS Scheme based on the infraction of the provisions of the FCO;

22.3.3. During the course of proceedings on 03.09.2025, the submission of the learned counsel for the respondent was specifically recorded to the effect that action against the petitioner has been taken by taking recourse to Clause-31 of the FCO.

22.4. The petitioner has rightly pointed out that in terms of the respondent's own guidelines dated 08.06.2023, it has been specifically prescribed as under:



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Evidently, the guidelines contemplate a proportionate sanctioned regime, whereby in the case of first, second or third violation of the guidelines, certain subsidy amount is recoverable and only in the case of repeated violations / more than three times, the manufacturer can be removed from the NBS Scheme. This aspect has not been taken note of / much less dealt with in the “Oral Hearing Report” / impugned decision taken by the DoF.

23. In the above conspectus, it is evident that the exercise conducted by the respondent suffers from significant procedural lapses and non-consideration of relevant aspects.

24. Considering the totality of circumstances, the following directions are issued:-

- The communication dated 24.07.2024 and the accompanying Oral Hearing Report, are set aside;
- The respondent shall carry out a fresh exercise for determining the petitioner's eligibility for grant of subsidy under the NBS Scheme during the period 13.03.2024 to 09.09.2024. The previous exercise conducted by the respondent shall not come in the way of such fresh



- determination;
- iii. In case the petitioner is sought to be removed from the NBS Scheme for the concerned period on account of infraction of the provisions of the FCO and/or if removal of the petitioner from the NBS Scheme is sought to be justified on the provisions of the FCO, a specific show cause notice shall be given to the petitioner in this regard. The petitioner shall be entitled to file a response thereto to deal with the concerned allegations;
- iv. The respondent shall take into account the entire material on record including the guidelines dated 08.06.2023, and shall also afford an opportunity of hearing to the petitioner for the purpose of taking a fresh decision (uninfluenced by the exercise previously carried out); and
- v. The Secretary, DoF, Ministry of Chemicals and Fertilizers, Government of India shall nominate a senior official (who has not dealt with the matter previously) to afford an opportunity of hearing to the petitioner and to pass a fresh order, *inter-alia*, determining the entitlement of the petitioner, and/or as to whether the removal of the petitioner from the NBS Scheme was justified. If it is found that the petitioner is entitled for subsidy for the period 13.03.2024 to 09.09.2024, necessary consequential order/s for grant of subsidy shall be passed.
25. The petitions are disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

FEBRUARY 27, 2026

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