

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.01.2015

+ **W.P.(C) 4898/2013 & CM No. 11109/2013**

THE FERTILISER ASSOCIATION OF INDIA Petitioner

versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Amit Sibal, Sr. Advocate with
Ms Kaveta Wadia & Mr Shashank Tripathi.

For the Respondents : Mr Saqib.

**CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU**

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner is an association of fertilizer manufacturers/importers and has filed the present petition impugning:

1.1 Clauses 5 & 6 of the Office Memorandum (hereafter 'OM') dated 03.05.2013 (hereafter 'OM-1') whereby the fertilizer manufacturers/importers were directed to reduce the Maximum Retail Price (MRP) of other grades of Phosphatic and Potassic (P&K) fertilizers to the extent of the amount mentioned in the OM-1. The fertilizer manufacturers/importers were further warned that action would be taken against the entities who did not comply with the price reduction.

1.2 Clauses (ii) and (iii) of another OM dated 03.05.2013 (hereafter 'OM-2')

1.3 OM dated 21.06.2013, which required the fertilizer manufacturers/importers to submit certified cost data alongwith their claims of subsidy in order to check the reasonableness of MRP of the fertilizers. The said OM also indicated that the subsidy would be restricted if it is established that the MRP of fertilizers is unreasonable.

1.4 OM dated 26.06.2013 whereby reference MRPs of other grades of P&K fertilizers were specified.

OM-1, OM-2, OM dated 21.06.2013 and OM dated 26.06.2013 are hereafter collectively referred as 'impugned notifications'.

2. According to the petitioner, the impugned notifications are unreasonable, arbitrary and are inherently in conflict with the rationale of the Nutrient Based Subsidy Scheme (hereafter 'NBS Scheme') as introduced in 2010.

Submissions

3. The learned senior counsel appearing for the petitioner submitted that in terms of clause 4 of OM-1, the fertilizer manufacturers/importers were allowed to fix MRP of P&K fertilizers at reasonable level in conformity with the rationale of the NBS Scheme, however, the effect of clause 5 & 6 of OM-1 is to indirectly control and regulate the MRP of P&K fertilizers by directing price reduction in MRP and providing reference MRPs of other

grades of P&K fertilizers. He submitted that this was contrary to the underlying rationale of providing nutrient based subsidy.

4. He contended that the impugned notifications have resulted in the fertilizer manufacturers/importers ceasing to have any control over the price of fertilizers and since the manufacturers/importers do not have any control over the cost of fertilizer, the impugned notifications have disabled the fertilizer manufacturers/importers from recovering any adverse fluctuations in their costs.

5. He further submitted that the reference MRPs indicated under the impugned OM dated 26.06.2013 are unreasonable as the same have been made applicable retrospectively. He further submitted that the goods produced or imported between 01.04.2013 and 26.06.2013 would have to be sold at less than the cost as no lead time was provided and the mandatory reduction in MRP for the products imported in advance is arbitrary and irrational. He also urged that the reference MRPs indicated in the impugned notifications, were below the actual prices as prevalent on 31.03.2013.

6. The learned senior counsel for the petitioner relied upon the decisions of the Supreme Court in **Union of India v. Dinesh Engineering Corpn.: (2001) 8 SCC 491**, **Sindhi Education Society v. Govt. (NCT of Delhi): (2010) 8 SCC 49** and **Tata Cellular v. Union of India: (1994) 6 SCC 651** in support of his contention that a policy decision, which suffers from non-application of mind and is made without considering the relevant facts, is amenable to judicial review. He also relied upon the decision of a

Division Bench of this Court in *Southern Petro Chemical Industries Corporation Ltd. v. Union of India*: LPA No.231/2008, decided on 23.11.2009 to contend that the principles of promissory estoppel, proportionality and legitimate expectation are applicable in the present case.

7. He further contended that the impugned notifications violated Article 14 and 19(1)(g) of the Constitution of India and were also contrary to Article 300A of the Constitution of India. The learned counsel for the petitioner relied upon the decision of the Supreme Court in *K.T. Plantation (P) Ltd. v. State of Karnataka*: (2011) 9 SCC 1 in support of his contention.

8. The learned counsel for the respondents submitted that the government had found that the price of fertilizers had not fallen despite a fall in the international prices and had accordingly issued the impugned notifications to ensure that subsidy is available only to manufacturers/importers who sold the fertilizers at reasonable prices and did not indulge in profiteering.

9. It was submitted that the impugned notifications have been issued in public interest and legitimate expectation does not come in way of public interest. Reliance was placed on *Union of India & Anr. v. International Trading Co. & Anr.*: AIR 2003 SC 3983. It was further contended that judicial review of economic decisions is limited and the courts would interfere only when it is established that the decision is violative of constitutional/legal limits of power or abhorrent to reason. Reliance was

placed on *BALCO Employees Union (Regd.) v. Union of India & Ors.*:
AIR 2002 SC 350.

10. It was submitted on behalf of the respondent that retrospective revision of the subsidy scheme is permissible. Reliance was placed on *Duncan Industries Ltd. v. Union of India*: (2006) 3 SCC 129.

Analysis, reasoning and conclusion

11. At the outset it is relevant to note that the government has not notified the MRP of P&K fertilizers under the Fertilizer Control Order, 1985 and all the letters/communications of the Department of Fertilizers regarding the NBS for P&K fertilizers are neither issued under the Essential Commodities Act/Fertilizer Control Order, nor are they notified in the Official Gazette.

12. Before proceeding further, it is relevant to examine the policy with regard to fertilizer pricing and subsidy. In 1957, the Government notified fertilizers (including urea) as an “essential commodity”, under the Essential Commodities Act, 1955 (hereafter the 'Act'); the Fertilizer Control (Order), 1957 enabled the government to fix the MRP of fertilizers. In 1977, the government introduced the Retention Price Scheme whereby the difference between the cost of production and/or acquisition and MRP of the fertilizers, were offset by the government by providing subsidy to the fertilizer companies. The Fertilizer Control (Order), 1957 was superseded by the Fertilizer Control (Order), 1985.

13. Thereafter, on the recommendations of the Joint Parliamentary Committee setup by the government in 1991, the prices of P&K fertilizers were de-controlled w.e.f. 25.08.1992. Subsequent thereto, the Department of Agriculture & Cooperation introduced a product based subsidy regime for the de-controlled P&K fertilizers on ad-hoc basis w.e.f. 01.10.1992. Under the said scheme the MRP of fertilizers was determined/fixed by the government and the difference between the MRP and the cost of production and/or acquisition was fully offset by a subsidy. The said scheme was continued by the government upto 31.03.2010, *albeit*, the parameters were changed from time to time.

14. By a Notification dated 04.03.2010, the Department of Fertilizers, Government of India introduced the NBS Scheme for P&K fertilizers w.e.f. 01.04.2010. As per the NBS Scheme, the government would fix a rate of subsidy - on per kg basis - on nutrients namely Nitrogen, Phosphorus, Potash and Sulphur (hereafter collectively referred as 'NPKS') contained in P&K fertilizers. The subsidy rates on per kg basis would be converted into per metric tonne basis for various other grades of P&K fertilizers. An Inter-Ministerial Committee was constituted, which was charged with the function to recommend subsidy rates before the start of the financial year for the decision of the government. The market price of subsidized fertilizers was to be determined on demand-supply basis.

15. The object of the introduction of the NBS Scheme was to ensure the availability of innovative fertilizer products in the market at reasonable prices. In this context, the budget speech delivered by the then Finance Minister on 06.07.2009 is relevant and its extract is reproduced below:-

“In the context of the nation's food security, the declining response of agricultural productivity to increased fertilizer usage in the country is a matter of concern. To ensure balanced application of fertilizers, the Government intends to move towards a nutrient based subsidy regime instead of the current product pricing regime. It will lead to availability of innovative fertilizer products in the market at reasonable prices. This unshackling of the fertilizer manufacturing sector is expected to attract fresh investments in this sector. In due course it is also intended to move to a system of direct transfer of subsidy to the farmers.”

16. Under the NBS Scheme for the year 2010-11 and 2011-12, the fertilizer companies were allowed to fix the MRP of P&K fertilizers and subsidy rates were notified by the government. The government considered the prices of Urea, DAP, MOP and Sulphur prevailing at that time as benchmark prices for determining the subsidy rates for the 1st year i.e. 2010-2011.

17. Apparently, the fertilizer manufacturers/importers increased the prices of fertilizers, from the last quarter of 2010-11. Therefore, a notification dated 08.07.2011 was issued by the government with respect to the NBS for the year 2011-12 whereby the fertilizer companies were allowed to fix the MRP of P&K fertilizers, however, it was specified that MRP would be fixed at reasonable levels.

18. By a notification dated 29.03.2012, the government notified the subsidy rates for the year 2012-13 and the fertilizer companies were allowed to fix the MRP of the P&K fertilizers at reasonable levels based on demand-supply dynamics. The subsidy rates under the NBS Scheme for the year 2012-13 were fixed on the basis of the prevailing international prices

of the fertilizers, landed prices in the country, exchange rate, inventory levels in the country and affordability of the farmers. The comparison of benchmark prices was done away with by the government as the benchmark prices were revised on two occasions while fixing the subsidy rates for the year 2011-12 and the price adopted for fixation of subsidy rates were also taken as minimum price of P&K fertilizers in the international market.

19. By OM-1, the government notified the subsidy rates for the year 2013-14 and provided reference MRPs of the fertilizers with the provision of minimum price reduction in the MRP of the fertilizer for the year 2013-14. According to the respondent, the fertilizer companies had fixed the MRP of DAP and MOP corresponding to the international price of USD 580 PMT and USD 490 PMT respectively. And, since the prices of DAP and MOP had shown a downward trend in the international market since December 2012, it was found that the concerned entities could contract import of DAP and MOP at the international prices of around USD 520 PMT and USD 420 PMT respectively. It was asserted that the government had taken note of the international prices prevailing between January 2013 and March 2013 and due to the reduction in international prices of DAP and MOP by USD 60 PMT and USD 70 PMT respectively, it was estimated that the procurement cost of DAP and MOP would come down approximately by ₹3500 PMT and ₹4000 PMT respectively. Keeping in view that the prevailing international prices of DAP and MOP were USD 580 PMT and USD 490 PMT respectively and the MRPs of DAP and MOP in the country were found to be around ₹24000 PMT and ₹17000 PMT

respectively, the government concluded that there was scope for reduction in prices by minimum of ₹1500 PMT and ₹1000 PMT from the prevailing level of MRPs of DAP and MOP.

20. Therefore, the government - with the recommendation of an Inter-Ministerial Committee and approval of Cabinet Committee on Economic Affairs - decided that the prices of the fertilizers ought to be reduced to reasonable levels. This was to maintain the balance between the MRPs and subsidy rates and to ensure that the benefit of the reduction in the international prices were passed through to the farmers.

21. The challenge laid to the impugned notifications has to be viewed in the backdrop of the aforesaid facts and policy framework. The controversy that needs to be addressed is whether the respondents are precluded from insisting that fertilizers be sold at indicative prices in order to avail the nutrient based subsidy. And, whether the reference MRPs of fertilizers fixed by the respondents are reasonable.

22. At this stage, it is necessary to refer to the relevant clauses and contents of the impugned notifications, which are impugned by the petitioner. Clauses 5 & 6 of OM- 1 are quoted below:-

“5. At the level of subsidy announced for the year 2013-14, the fertilizer companies are required to reduce the MRP of DAP and MOP by a minimum of Rs 1500 PMT and Rs 1000 PMT respectively. For the purpose of reduction in MRP, the reference MRP of DAP and MOP shall be Rs 24000 PMT and Rs 17000 PMT respectively. A commensurate minimum

reduction in MRP in other grades of fertilizers covered under the scheme shall be as under:-

S. No.	Grades of fertilizers	Expected reduction in MRP (Rs/MT)
6		
1	MAP: 11-52-0-0	1477
2	TSP:0-46-0-0	1078
3	NPS: 16-20-0-13	844
4	NPS: 20-20-0-13	938
5	NPK: 10-26-26-0	1277
6	NPK: 12-32-16	1298
7	NPK: 14-28-14	1218
8	NPK: 14-35-14	1382
9	NPK: 15-15-15	953
10	AS:20.6-0-0-23	483
11	NP:28-28-0-0	1313
12	NPK: 17-17-17	1080
13	NPK: 19-19-19	1207
14	SSP:0-16-0-11	375
15	NPK:16-16-16-0	1017
16	DAP lite: 16-44-0-0	1406
17	NPKS:15-15-15-09	953
18	NP: 24-24-0-0	1125
19	NP: 20-20-0-0	938
20	NPS: 18-46-0-4	1500

6. In case the MRP of P&K fertilizers are not reduced as indicted in para 5 and the companies are found to be indulging in undue profiteering, the IMC will review and recommend suitable measures for action by DOF. The action may include, recovery of subsidy to the extent of unreasonableness on that particular grade of fertilizer, removal of any grade/grades of fertilizers of a particular

company or the fertilizer company itself from the NBS scheme and also reduction in the NBS rates.”

The petitioner also impugns Clauses (ii) & (iii) of OM-2, which read as under:-

- “ii) It shall be mandatory for all the fertilizer companies to submit, along with their claims of subsidy, certified cost data in the prescribed format and as per the requirement for the purpose of monitoring of MRPs of P&K fertilizers fixed by the fertilizer companies.
- iii) In cases, where after scrutiny, unreasonableness of MRP is established or where there is no correlation between the cost of production or acquisition and the MRP printed on the bags, the subsidy may be restricted or denied even if the product is otherwise eligible for subsidy under NBS. In proven case of abuse of subsidy mechanism, DOF, on the recommendation of IMC may exclude any grade/grades of fertilizers of a particular company or the fertilizer company itself from the NBS scheme.”

23. By the impugned OM dated 26.06.2013, the respondent specified that the reference MRP of DAP & MOP would be taken as ₹24,000 PMT and ₹17,000 PMT respectively. Accordingly, the respondent had also indicated the reference MRP of other grade of P&K fertilizers. The impugned OM dated 21.06.2013 called upon the fertilizer

manufacturers/importers to ensure that the data as required by OM- 2 is submitted to the concerned authorities.

24. Essentially, the respondents have called upon the fertilizer manufacturers/importers to reduce the MRPs of the fertilizers, by specified amounts and further asked the fertilizer manufacturers/importers to provide the necessary cost data.

25. The learned senior counsel for the petitioner assails the impugned notifications as unreasonable and contrary to the fundamental rationale of the NBS Scheme. According to the petitioner, there is no scope for the government to fix the MRP under the new policy (NBS Scheme) whereunder the subsidy is fixed on the basis of nutrients and the manufacturers/importers have no control over the costs. It was contended that in the circumstances fixing MRP for fertilizers would render the entire NBS Scheme unviable as the manufacturers/importers would have no control over any of the components, namely, cost, MRP or the subsidy. It is urged that this would render the manufacturing of fertilizers unviable.

26. There are three facets to the challenge laid by the petitioner; the first being, whether the policy of indicating a reference MRP is, *per se*, contrary to the NBS Scheme; the second being, whether the impugned notifications are, *per se*, unreasonable, arbitrary and uninformed by reason; and lastly, whether the reference MRPs fixed are unreasonable and arbitrary, which render manufacture/import of fertilizers unviable.

27. Insofar as the first facet is concerned, that is, whether the respondents are precluded from fixing MRP of fertilizers under the NBS Scheme, I am

unable to accept the contention that fixing or indicating the MRP is inherently contrary to the NBS regime and is thus, arbitrary or unreasonable. The theme of the NBS Scheme is to provide a fixed subsidy based on the nutrients. The government felt that the earlier policy of providing subsidy to fill the gap between cost and MRP, did not incentivize innovation and efficiencies in production. Thus, the NBS Scheme was adopted which provided for a fixed subsidy. The paradigm shift in the new policy (NBS Scheme) was to avoid variable subsidies, which were calculated to compensate the difference between the cost and the MRP of fertilizers. The NBS Scheme provides for a fixed subsidy thus compelling fertilizer manufacturers/importers to reduce their costs and increase efficiencies. Although the manufacturers were free to fix the MRPs of their respective products, it would be inaccurate to state that the same formed the substratal theme of the NBS Scheme or that precluded the respondents from examining the MRPs charged by various manufacturers or importers.

28. Indisputably, the purpose of providing subsidy is to ensure that fertilizer is available to the farmers at a reasonable price; payment of subsidies to fertilizer manufacturers/importers is to subsidize the costs to the farmers. This being the principal object, it is obvious that monitoring of MRPs charged from farmers is not extraneous to ensuring that the subsidies are passed on to the farmers. Therefore, in my view, the contention that the government authorities cannot monitor the MRPs under the NBS Scheme or that the fixing of MRPs of fertilizers is repugnant to the NBS Scheme, must be rejected. It is incumbent upon the respondents to ensure that fertilizer manufacturers/importers do not profiteer or make unreasonable

profits as that would imply that the subsidies granted by the respondents have ended up enriching the fertilizer manufacturers/importers instead of subsidizing the costs to the farmers. I find no intrinsic conflict between monitoring the MRPs of fertilizers to ensure that the same are maintained at reasonable level and the NBS Scheme.

29. The learned counsel for the respondent had emphasised that fertilizer companies have no control over any of the variables i.e. cost of production/acquisition, MRP or the subsidy and this would strike at the viability of the members of the Petitioner Association. In my view, this contention is also fundamentally flawed. The cost of production/acquisition has various components; efficiencies in manufacturing, management of the holding costs, better supply chain management etc. are areas where fertilizer manufacturers could reduce their costs. It cannot be disputed that the costs of production/acquisition of a well managed company would be lower than those entities which are not as well managed. Thus, if the MRP is fixed at reasonable level, efficient and well managed entities would be viable and would be able to make reasonable profits by increasing their efficiency. Thus, it is not possible to accept that there is a conceptual flaw in the action of the respondents in insisting that reasonable MRPs be fixed. The impugned notifications providing reference MRPs to ensure that there is no profiteering or that no unreasonably exaggerated profits are made by the fertilizer companies, cannot be assailed as being arbitrary. This does not militate against the policy of providing a fixed subsidy (i.e. under the NBS Scheme).

30. The second facet of the challenge relates to the alleged unreasonableness of the reference MRPs. The petitioner contended that the subsidy is fixed in the beginning of the year and the input costs and exchange rate fluctuates during the production cycle and renders the cost of manufacturing/import variable. Since this can only be recovered from the sale price, the respondents could not fix the same. It was urged that the action of the Government in fixing a MRP would expose the manufacturers to increase in the cost of production/increase in input cost and to adverse exchange rate fluctuations. It was contended that subjecting the manufactures/importers to such vagaries is unreasonable and arbitrary.

31. It cannot be disputed that if the respondents fix the subsidy as well as the MRP of the fertilizers, the manufactures/importers have no recourse to recover any increase in costs on account of adverse exchange fluctuations. However, no complaint in this regard can be made if the MRPs are fixed in a reasonable manner taking into account the relevant data relating to costs. Obviously, no grievance could be made on account of the action of the respondents in insisting on a reasonable MRP if the MRPs are fixed to provide a reasonable profit to a reasonably well managed fertilizer manufacturer/importer. In the present case, it is asserted by the respondents that the necessary data was taken into account before insisting that the MRPs be reduced. It is difficult to accept that, conceptually, there is any infirmity with the respondents insisting in reduction of MRPs, if it is found that the MRPs are resulting in exaggerated profits or that the subsidies are not passed through to the farmers.

32. The petitioner contended that the reference MRPs provided under the impugned OM dated 26.06.2013 would have a retrospective effect inasmuch as the prices would also be applicable to unsold stocks imported prior to the said impugned OM. However, the respondents claim that they had considered the international prices prevailing between January 2013 and March 2013 before notifying the reference MRPs. It is noted that the subsidy is payable on the sale of fertilizers and given the statement of the respondents that prices prevailing between January 2013 and March 2013 had been considered; the petitioner's contention that the impugned notifications have a retrospective effect and are, therefore, unreasonable is without merit.

33. It is well settled that the judicial review of the policy decision is very limited and the courts will not interfere unless the decision is arbitrary, mala fide or is in clear violation of the statute or a constitutional provision. The Supreme Court in *Federation of Rly. Officers Assn. v. Union of India*: (2003) 4 SCC 289 held as under:-

“12. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.”

34. The Supreme Court in *Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd.*: (2011) 1 SCC 640 held that the Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country and if the Government is satisfied that change in

the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy. It was further held that the courts give a large leeway to the executive and the legislature in the matters of economic policy. The relevant portion of the judgment is as under:-

“40. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. The impugned policy parameters were fixed by experts in the Central Government, and it is not ordinarily open to this Court to sit in appeal over the decisions of these experts. We have not been shown any violation of law in the impugned notification or press note.

41. The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. *In matters of economic policy, it is settled law that the court gives a large leeway to the executive and the legislature.* Granting licences for import or export is an executive or legislative policy. The Government would take diverse factors for formulating the policy in the overall larger interest of the economy of the country. When the Government is satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy.

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45. In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and

experimental. Since economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field.

46. In our opinion, it will make no difference whether the policy has been framed by the legislature or the executive and in either case there should be judicial restraint. The Court can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise.”

35. The Supreme Court in *Prag Ice & Oil Mills v. Union of India*: (1978) 3 SCC 459 held that in the economic matters such as price fixation, the interference of the court is limited. The relevant portion of the judgment reads as under:-

“24. ... We do not think that it is the function of this Court or of any court to sit in judgment over such matters of economic policy as must necessarily be left to the Government of the day to decide. Many of them, as a measure of price fixation must necessarily be, are matters of prediction of ultimate results on which even experts can seriously err and doubtlessly differ. Courts can certainly not be expected to decide them without even the aid of experts.”

36. In *Duncan Industries Ltd.* (*supra*), the Supreme Court stated the above principle, in the context of the retention price of fertilizers fixed by Fertilizer Inter-coordination Committee, 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. [See e.g. *BALCO Employees' Union (Regd.) v. Union of India*, (2002) 2 SCC 333 at pp. 362-63 (paras 46, 47), pp. 381-82 (paras 92, 93); *Bhavesh D. Parish v. Union of India*, (2000) 5 SCC 471 at pp. 484-85 (para 23); *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India*, (1992) 2 SCC 343 at p. 397 (paras 69 and 70); *State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566 at pp. 605-06 (para 34); *Premji Bhai Parmar v. Delhi Development Authority*, (1980) 2 SCC 129 at pp. 137-39 (para 9).] 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.” [*Noble State Bank v. Haskell*, 219 US 575 at p. 580 (1910).]

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 Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] 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.”

37. Clearly, the approach of the respondents to fix a reasonable reference MRP is not a decision that can be assailed as unreasonable in the sense as explained in *Wednesbury Corpn (supra)*.

38. The next issue to be examined is whether the direction to reduce MRPs and indicating reference MRPs (at the specified values) is unreasonable. According to the petitioner, the reference MRPs fixed are unreasonable and are below the actual prices as were prevalent on 31.03.2013. It has been contended that the respondents have fixed the reference MRPs without taking into account that the raw materials had been imported at higher costs prior to January-March, 2013 after the commencement of the NBS Scheme in April, 2012. This was disputed by the respondents and it was asserted that the government had taken note of the international prices prevailing between January 2013 and March 2013. It was contended that international prices of DAP and MOP had fallen by USD 60 PMT and USD 70 PMT respectively. This would translate to fall in the procurement cost of DAP and MOP by approximately ₹3500 PMT and ₹4000 PMT, respectively. Keeping this view the government concluded that reduction in prices by minimum of ₹1500 PMT and ₹1000 PMT from the prevailing level of MRPs of DAP and MOP would be reasonable.

39. In my view, the challenge to the reasonableness of the reference MRPs cannot be considered without reference to the relevant cost data pertaining to a manufacturer/importer. The question whether the reference MRP is unviable in respect of a particular manufacturer or certain manufacturer(s) cannot be examined in a vacuum without reference to the financial particulars of the concerned manufacturer(s)/importer(s).

40. It is relevant to note that none of the fertilizer manufacturers or importers have complained or challenged the reference MRPs fixed by the respondents. It is also relevant to note that the respondents have sought to collect data by the impugned notifications. Indisputably, this is for the purposes of enabling respondent no.2 to take an informed decision. The respondents have called upon the fertilizer manufacturers/importers to provide the necessary data so as to ensure that the reference MRPs are reasonably fixed.

41. The respondents have also affirmed that a meeting of representative of the fertilizer industry was held on 06.05.2013, which was attended by the CEOs of leading fertilizer companies. It is asserted that the participants had expressed their satisfaction with the functioning of the policy. Clearly, fixing of a reasonable MRP has to be an interactive exercise, *inter alia*, based on the cost sheets and inputs that are provided by various fertilizer manufacturers/importers. It is not possible to entertain a challenge to the price fixation without such particulars. The fundamental premise on the basis of which the petitioner is seeking to challenge the reasonableness of the MRPs fixed is that the same have rendered the manufacturing and import of fertilizers as unviable. However, no empirical data has been provided which would indicate that the cost of manufacturing/import of fertilizers is higher than the sum of the subsidy and the MRP fixed by the respondents.

42. The decision of a Division Bench of this Court in ***Southern Petro Chemical Industries*** (*supra*), relied upon by the petitioner, is also not applicable. In the said case, the Government had announced increase in the

concession of ₹750 per tonne, ₹100 per tonne and ₹500 per tonne for DAP, SSP and MOP respectively. The petitioners therein had shown that it had acted on such representation and placed orders for import for the entire year. In the present case, there is no material to indicate that the petitioner had acted to its detriment on the basis of any declaration made by the respondent. In the present case, the challenge is regarding reasonableness of the MRP and that can only be determined on facts of a particular manufacturer or importer. The petitioner also relied upon the principles of promissory estoppel as explained by the Supreme Court in **Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.:** (1979) 2 SCC 409 and **MRF Ltd., Kottayam v. Assistant Commissioner:** (2006) 8 SCC 702. It is relevant to note that the doctrine of promissory estoppel is based on the principle that a party ought not be permitted to resile from a representation that has been accepted by the other party and the other party has acted to its prejudice relying on such representation. It is, thus, essential that the party claiming such relief plead the necessary facts for recourse to this principle. The parties who are stated to have acted to their prejudice (manufacturers/importers) are not before this Court. The petitioner is a company incorporated under Section 26 of the Companies Act, 1913 with the object to promote and protect the fertilizer industry in India and to promote the common business interest of its member companies. In my view, it would not be possible to consider this aspect of the challenge, without a particular manufacturer/importer pleading the relevant facts and substantiating its claim.

43. The petition and pending application are, accordingly, dismissed. No order as to costs.

VIBHU BAKHRU, J

JANUARY 06, 2015
MK/RK

