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

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Judgment delivered on: 19.05.2017

+ **W.P.(C) 10781/2016**

M/S LIVEN AGRICHEM PTE LTD. & ANR. .... Petitioners

versus

UNION OF INDIA & ORS

..... Respondents

**Advocates who appeared in this case:**

For the Petitioner :

Mr P.Chidambaram, Senior Advocate and Mr Dhruv Mehta,  
Senior Advocate with Ms Udit Singh.

For the Respondent :

Mr Vikram Jetly, Advocate with Mr H.P.Singh, Law Officer,  
DAC& FW. Mr S.Bhardwaj, Assistant Commissioner  
(Shipping).  
Mr Sudipto Sircar, Advocate for R-4.  
Mr Srinam Krishna and Mr Ruchir Ranjan Rai, Advocates for  
R-3.

**CORAM:-  
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**19.05.2017**

**SANJEEV SACHDEVA, J. (ORAL)**

**W.P.(C) 10781/2016 & CM No.42190/2016(stay)**

1. The petitioners, by the present petition, seek a direction to respondent Nos.1 & 2 to allow re-testing of the third sample lying with Central Fertilizer Quality Control & Training Institute Laboratory, Faridabad (CFQCL&TI).

2. The petitioners under a Contract with respondent No.3 had shipped Urea. In terms of the Agreement, sample of the Urea was to be drawn for the purposes ascertaining whether the same corresponded with the specifications as agreed to between the parties.

3. It is an admitted position that a single sample was drawn that was broken into three parts.

4. One of the said samples was sent for testing to CFQCL&TI, Faridabad which submitted report dated 20.07.2015.

5. The said laboratory reported the nitrogen content in the Urea to be 46.20% by weight. The nitrogen content was standard and in terms of the contract. The particle size was found to be 73.54 as against 96, which was non-standard.

6. Since the particle size was reported to be non-standard, the petitioners requested, in terms of the Contract, to refer the second part of the sample for Umpire Analysis.

7. Learned senior counsel for the petitioners contends that since the report had indicated that the particle size was non-standard, the

Umpire Analysis should have been only with regard to particle size, however, the Laboratory to which the sample was sent submitted a report both with regard to the nitrogen content as well as particle size.

8. The Umpire Analysis was rendered by the Fertilizer Quality Control Laboratory, Bhopal. In the report dated 30.09.2015 issued by the said Laboratory, the Nitrogen content was shown to be 38.92% as against 46.20, which was reported by CFQCL&TI, Faridabad. The particle size was shown to be 64.70 as against 73.54.

9. In terms of the Umpire Analysis Report rendered by Fertilizer Quality Control Laboratory, Bhopal both the nitrogen content as well as the particle size were non-standard.

10. Learned senior counsel for the petitioners submits that in terms of the properties of urea, chemical content of nitrogen can never fall below 46%. Without prejudice to the same, he, submits that as only one sample was drawn and it was broken into three parts, it is not possible that there can be a difference in the chemical analysis of two accredited Laboratories report. He submits that there is an apparent error in the reports.

11. It is, in these circumstances that the petitioners have prayed that the third part of the sample be sent to a referral Laboratory in terms of Clause 29B of the Contractual and Fertilizer (Control) Order, 1985 (hereinafter referred to as the 'Fertilizer Control Order').

12. Learned counsel appearing for respondent No.3 submits that respondent No.3 has acted upon the second report and since the second report had shown both the nitrogen content as well as the particle size as non-standard, respondent No.3 had rejected the consignment.

13. Learned counsel for the respondents submits that there is no provision in the Fertilizer Control Order for testing the third part of the sample for analysis.

14. I am unable to accept the objection raised by the learned counsel for respondent Nos.1 & 2 in view of the fact that there is great variation in the Analysis Report of the two Laboratories insofar as the nitrogen content is concerned.

15. Admittedly only one sample was drawn, which was broken into three parts. Testing of two parts of the same sample cannot show such

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a variation which may happen at the time of testing of two different Laboratories.

16. It is an admitted position that only one sample was drawn then broken into three parts. One part each was tested by the two laboratories. The Laboratory at Faridabad reported the nitrogen content, i.e. nitrogen percentage by weight as 46.20%. The second Laboratory at Bhopal has reported the nitrogen content by weight to be 38.92%. There is a great variation, i.e. variation of -7.28, which would translate to approximately 15% within the two reports.

17. Since there is substantial variation in the Analysis Report, civil consequences have flown, which would adversely affect the rights of either the petitioner or respondent No.3. There is no clarity as to which of the two reports is accepted. If the report of Faridabad Laboratory dated 20.07.2015 is accepted, then only particle size is non-standard and the nitrogen content is standard and within the acceptable limit, as per the contract between the petitioner and respondent No.3. In case the report of the Bhopal Laboratory dated 30.09.2015 is accepted, both the particle size and nitrogen content is

non-standard.

18. Since there is no clarity as to which is the report to be accepted, in the interest of justice, it would be appropriate to send the third part of the sample for the purposes of a chemical analysis by a Laboratory duly recognized in terms of Clause 29B of the Fertilizer Control Order.

19. Learned counsel for the respondent Nos. 1 & 2 submits that the petitioners cannot be informed in advance as to which Laboratory the third part of the sample is to be sent.

20. In view of the above, respondents 1 & 2 are directed, at their own discretion and without informing either of the parties, refer the third part of the sample to a Central Government Laboratory (other than the above referred two Laboratories) duly authorized and recognized in terms of clause 29B of the Fertilizer Control Order. Respondents 1 & 2 shall send the sample to the third Laboratory for referral analysis in terms of clause 29B of Fertilizer Control Order.

21. On a report being received from the said Laboratory, copy of the same shall be furnished to the petitioner as well as respondent

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No.3.

22. The cost of the chemical analysis shall be borne by the petitioner.

23. The Writ Petition is disposed of in the above terms.

24. *Dasti* under signatures of the Court Master.

MAY 19, 2017/

**SANJEEV SACHDEVA, J**

