

15.09.2020.
Item no. 8.
Court No.13
ap

**W.P.A. No. 6782 (W) of 2020
With
CAN 1 of 2020 [Old No. CAN 5731 of 2020]
(Through Video Conference)**

**The Phosphate Company Limited
Versus
Union of India & Ors.**

Mr. S.N. Mookerjee, ld. Senior Advocate,
Mr. P. K. Jhunjhunwala,
Mr. Shaunak Mitra.

...For the petitioner.

Mr. Y. Z. Dastur, ld. A.S.G.
Mr. Vipul Kundalia.

...For the respondent no.1.

Mrs. Suruchi Agarwala.

...For the respondent no.2.

Considering the urgency pleaded by the petitioner in CAN 5731 of 2020, the instant writ petition is taken up for hearing via video conference.

Accordingly the application being CAN 5731 of 2020 is also disposed of.

A short question is involved with regard to claim for subsidy in respect of certain amount of rock phosphates imported from the State of Egypt.

The petitioner is the manufacturer of fertilizers. In terms of the policy of the Government prevalent since 2011, subsidy was allowed in manufacture of fertilizers in the event, the raw material imported had a specific percentage of phosphate.

There are disputes as regards the percentage of phosphate in the raw materials imported by the petitioner.

The petitioner complains that five importers had in one single consignment of unascertained raw material, imported the same and four of them were allowed subsidy, after it was found by the second respondent, testing agency, that the said raw materials contains the relevant percentage of phosphate.

The petitioner's share of the consignment was not meeting the standards, according to the Government, hence are not entitled to subsidy.

The learned counsel appearing on behalf of the testing agency submits that there are contradictions in the statement made by the petitioner. On one hand they say that they were waiting for the approval as regards subsidy, in the same breathe, have gone ahead and used the said raw materials for manufacturer of fertilizer.

Counsel for the petitioner submits that they have raw materials to the extent of 5425 metric tons for use in manufacture but are unable to do so for want of clarification on the entitlement to subsidy.

This Court is of the view that as to whether the petitioner is entitled to subsidy or not, would have to be decided by the Government first and it is only then that a grievance would arise.

The petitioner, however, seeks the test report from the second respondent, namely, testing agency whose Counsel has assured this Court that the same shall be supplied to the petitioner's Advocate-on-record by three weeks from date. Let the same be done.

In so far as the claim for subsidy is concerned, the petitioner may take appropriate steps, inter alia, in the form of applying before the Central Government for availing the same and a suitable decision may be taken by the Central Government in accordance with law after due consultation with the testing agency.

With the aforesaid observations, the instant writ application shall stand disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Rajasekhar Mantha, J.)