

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-5936 / 2015

Date	Order with signature of Judge
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- 1) For hearing of main case.
- 2) For hearing of CMA No. 21893/2014.
- 3) For hearing of CMA No. 21894/2014.

19.11.2015

Mr. Yousuf Naseem Advocate for the Petitioner.
Mr. Asim Mansoor Khan DAG.
Mr. Muzaffar Iqbal Dy. Director, Plant Protection Department.

Through instant petition, the petitioner has impugned letter / notice dated 12.8.2014, issued by respondent No.2, whereby, on the basis of laboratory report issued by Senior Analyst, it has been observed that the referred sample of agricultural pesticide does not meet the registered specification approved by the department; hence further proceedings are to be initiated against the petitioner in terms of Agricultural Pesticides Ordinance, 1971.

Counsel for petitioner submits that the laboratory tests carried out by the respondents are not correct and have been altered and maneuvered malafidely and with ulterior motives, so as to penalize and victimize the petitioner as it had refused to fulfill their illegal demands. Counsel submits that the petitioner would be satisfied if a test is directed to be carried out from an independent / third party laboratory as one sealed sample already obtained in terms of the Ordinance, 1971, is available with the petitioner, as the tests carried out by the petitioner as well as pre-shipment inspection company in the country of origin are in accordance with the registered specification.

Learned DAG ably assisted by the departmental representative has vehemently opposed the very maintainability of instant petition on the ground that it involves factual controversy, whereas, two tests have already been carried out by the laboratories notified / approved under the Ordinance 1971 and the rules, and therefore any further test from a private laboratory is unwarranted, besides being impermissible in law.

We have heard the Counsel for the petitioner as well as learned DAG and have perused the record. The precise objection of the petitioner is that since they had refused to fulfill illegal demands, laboratory reports have been issued / prepared against them, as they

are in possession of reports issued by the laboratory in the Country of origin which is according to the required specification. Though this is hardly a ground on the basis of which a writ can be issued, being a question requiring evidence, however, since there are reports in favor (from pre-shipment company) and against the petitioner issued by respondents laboratories, coupled with the fact that the two tests carried out by the respondent's laboratories are also at variance insofar as the actual percentage of the basic ingredient is concerned, we do not see any harm being caused to the case of respondents, if a further test is carried out by another public laboratory. Moreover, these laboratories though notified, are under the control of the contesting parties. A learned Division Bench of this Court in the case of ***Al Hamd Edible Oils Limited Vs. Federation of Pakistan & Others (2003 PTD 552)***, wherein, there were three reports in consideration, one issued by the Customs Laboratory and the other by PCSIR and HEJ laboratories, observed that the reports of PCSIR and HEJ Laboratories are to be given more weight as against the report of Customs laboratory, as these laboratories besides, being neutral in the matter, are technically more equipped and reliable.

Accordingly, we direct the respondents to obtain the sample available with the petitioner, which was sealed by them at the time of inspection, and if satisfied that it is the same, then send it for testing to the PCSIR Laboratory (Pakistan Council for Scientific and Industrial Research), Karachi. The petitioner's representative may accompany the respondents at the time of sending samples to PCSIR, whereas, all costs incurred in this regard are to be paid by the petitioner. If the result is in favor of the petitioner, the impugned notice shall be withdrawn, and if otherwise, respondents may initiate further action as provided in the Ordinance, 1971.

Petition stands disposed off in the above terms.

JUDGE

JUDGE