

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 23RD DAY OF JANUARY 2015/3RD MAGHA, 1936

WP(C).No. 28454 of 2013 (F)

PETITIONER:-:

**K V BIJU, AGED 41 YEARS
S/O.KARUKAMPALLY VIJAYAN, KARUKAMPALLY HOUSE
CHERPU P.O., THRISSUR DISTRICT.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.B.SUBRAMANYAN**

RESPONDENTS:-:

- 1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
MINISTRY OF AGRICULTURE,
DEPARTMENT OF AGRICULTURE AND CORPORATION
CENTRAL SECRETARIAT, NEW DELHI, PIN - 110 001.**
- 2. THE JOINT SECRETARY (PP),
APPELLATE & REVISIONAL AUTHORITY TO CIB & RC
MINISTRY OF AGRICULTURE, KRISHI BHAVAN
DR.RAJENDRA PRASAD ROAD, NEW DELHI, PIN - 110 001.**
- 3. THE REGISTRATION COMMITTEE,
CENTRAL INSECTICIDES BOARD
DIRECTORATE OF PLANT PROTECTION
QUARANTINE & STORAGE (PPQ&S), N.H.IV, FARIDABAD
HARYANA - 121 001, REPRESENTED BY ITS SECRETARY.**
- 4. M/S.SUMITOMO CHEMICALS INDIA PVT. LTD.,
UNIT NO.703 & 704, 7TH FLOOR
AGGARWAL CORPORATE TOWERS, PLOT NO:23, DISTRICT CENTRE
RAJENDRA PLACE, NEW DELHI - 110 008.**
- 5. INDIAN COUNCIL OF MEDICAL RESEARCH,
P.O.BOX NO:4911, ANSARI NAGAR, NEW DELHI - 110 029
REPRESENTED BY ITS DIRECTOR GENERAL.**

**R1-R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R4 BY ADVS. SRI.MADHU N.NAMBOOTHIRIPAD
SRI.C.E.MANOJ NAIR
SRI.RAJESH AGARWAL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-08-2015 ALONG WITH WPC. 14962/2014, THE COURT ON 23-01-2015,
DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE MEETING OF THE 3RD RESPONDENT REGISTRATION COMMITTEE IN ITS 305TH MEETING DATED 20.10.2009.
- EXHIBIT P2. TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE 330TH MEETING OF THE 3RD RESPONDENT DATED 16.07.2012.
- EXHIBIT P3. TRUE COPY OF THE APPEAL DATED 25.07.2012 FILED BY THE PETITIONER UNDER SECTION 10 OF THE ACT BEFORE THE 2ND RESPONDENT.
- EXHIBIT P4. TRUE COPY OF THE ORDER DATED 14.03.2013 ISSUED BY THE 2ND RESPONDENT.
- EXHIBIT P5. TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE 342ND MEETING OF THE REGISTRATION COMMITTEE HELD ON 27.09.2013.
- EXHIBIT P6. TRUE COPY OF THE PETITION DATED 11/10/13 FILED BY THE PETITIONER BEFORE THE R2.

RESPONDENT(S)' EXHIBITS

- EXHIBIT R4(1). A TRUE COPY OF RESOLUTION OF COMPANY IN FAVOUR OF DEPONENT
- ANNEXURE R4(1)A. A TRUE COPY OF RELEVANT PAGE OF DECISION TAKEN BY RESPONDENT NO.3 IN THE MEETING DATED 5/8/2009 (303TH MEETING)
- ANNEXURE R4(2). A TRUE COPY OF RELEVANT PAGE OF DECISION TAKEN BY RESPONDENT NO.3 IN THE MEETING DATED 20/10/2009 (305TH MEETING)
- ANNEXURE R4(3). A TRUE COPY OF REPRESENTATION GIVEN TO RESPONDENT NO.3 BY RESPONDENT NO.4
- ANNEXURE R4(4). A TRUE COPY OF RELEVANT PAGE OF DECISION TAKEN BY RESPONDENT NO.3 IN THE MEETING DATED 30/4/10 (309TH MEETING)
- ANNEXURE R4(5). A TRUE COPY OF RELEVANT PAGE OF DECISION TAKEN BY RESPONDENT NO.3 IN THE MEETING DATED 16/7/12 (330TH MEETING)
- ANNEXURE R4(6). A TRUE COPY OF THE ORDER PASSED BY REVISION AUTHORITY DATED 18/10/2013
- ANNEXURE R4(7). A TRUE COPY OF THE ORDER DATED 18/11/2013 PASSED BY DIVISION BENCH OF THIS HONOURABLE COURT IN CWP NO.25463/13

/ TRUE COPY /

A.MUHAMED MUSTAQUE, J.

~~~~~  
**W.P.(C).Nos.28454/2013 and 14962/2014**  
~~~~~

Dated this the 23rd day of January, 2015

J U D G M E N T

“C.R.”

These writ petitions pertain to registration granted to the fourth respondent-M/s.Sumitomo Chemical India Private Ltd. (hereinafter, referred to as the applicant) under the Insecticides Act, 1968. The writ petitions are filed by the same person. He claims to be an activist of swadeshi movement. He challenges the orders passed by the authorities on the ground of procedural illegality. The substantial issue regarding registration is pending in appeal before the second respondent in W.P.(C) No.14962/2014. For the purpose of reference, exhibits in W.P.(C).No.14962/2014 are relied on.

2. The Insecticides Act, 1968 (a Central Act), was enacted to regulate the import, manufacture, sale,

-:2:-

transport, distribution and use of insecticides in order to prevent risk to human beings, animals etc. Under Section 5 of the Act, a Registration Committee is constituted. Registration Committee can devise its own procedure in respect of business to be transacted by it. The third respondent in these writ petitions is the Registration Committee constituted under the Insecticides Act. The applicant approached the Committee for registration. That was declined as per the minutes of the meeting held on 20/10/2009. According to the writ petitioner, that refusal has attained finality. Ext.P1 is the decision of Registration Committee. In the year 2012, the Registration Committee took a decision as per Ext.P2 to grant registration to the applicant. This appears to have been done based on an application submitted by the applicant, wherein the applicant has pointed out an apparent error in appreciating the toxicity of the product. Petitioner challenged Ext.P2 under Section 10 of the Insecticides Act before the appellate authority.

-:3:-

The appellate authority noted that no appeal is maintainable under Section 10 and treating the appeal as a revision and exercising power under Section 11, partly allowed the appeal by holding that the opinion of Indian Council of Medical Research (ICMR), Delhi on toxicity of the chemical and its formulation shall be taken before taking final decision on registration. Thus, it was remanded to the Registration Committee for taking a decision.

3. W.P.(C).No.28454/2013 is filed challenging the decision of the appellate authority in not advertng to procedural illegality and irregularity revealed in the earlier decision of the Registration Committee. The case of writ petitioner is that the appellate authority failed to note that the Registration Committee has no authority to review its own decision declining the registration. According to the petitioner, the applicant, having failed to challenge the decision declining the registration, cannot seek to review the decision of the Committee without there being a

-:4:-

challenge before the higher authority. The remedy, according to the petitioner, available to the applicant was to file an appeal against that decision.

4. Pursuant to remanding of the matter by the appellate authority, opinion of ICMR was obtained by the Registration Committee and thereafter, registration was granted to the applicant. Challenging grant of registration, Ext.P8 appeal is filed before the appellate authority. Ext.P7 is the decision of the Registration Committee after the remand. W.P.(C). No.14962/2014 is filed commanding the appellate authority to dispose the appeal and to stay the operation of Ext.P7 order.

5. Learned counsel appearing for the applicant addressed various objections including *locus standi* of the writ petitioner. It is also argued that High Court does not have any jurisdiction to entertain these writ petitions.

6. In the facts and circumstances, the following points arise for consideration:

-:5:-

i. Whether this Court has any territorial jurisdiction to entertain this writ petition;

ii whether the Registration Committee has power to review its own decision;

iii whether petitioner has any *locus standi* to challenge the procedure of the Registration Committee.

7. Article 226(2) of the Constitution of India confers jurisdiction on High Court if the part of the cause of action arises within the territorial jurisdiction of the High Court. The cause of action to challenge the decision is based on the registration granted to the applicant who is having registered office in Delhi. The Registration Committee is located at Haryana. The cause of action means the bundle of facts giving rise to an action. A person residing anywhere in the Country may have right of action in law. However, jurisdiction of the High Court can be invoked only if the cause of action arises within territorial jurisdiction of the High Court. The cause of action in this context has to be

-:6:-

understood with respect to the purport and scope of the Insecticides Act. The Insecticides Act is enacted with a view to prevent human risk. Therefore, registration granted to the applicant can have an impact on any part of the country. It is to be noted that under Section 11 of the Insecticides Act, the Central Government may, at any time, call for the record relating to any case in which Registration Committee has given a decision to satisfy legality or propriety of any such decision. It is based on Section 11, the appeal filed by the petitioner was treated as a revision and the appellate authority remanded the case to the Registration Committee to take a decision after obtaining the views of ICMR, Delhi. Therefore, the scheme of the Act would clearly indicate that registration will have an impact on the people living in the entire country. Therefore, it cannot be said that cause of action would not arise within the territorial jurisdiction of this High Court as the impact of such registration can also affect the life of the people in the State of Kerala.

-:7:-

8. The learned counsel for the applicant relied on the decision of the Karnataka High Court in **Natasha Sondur and others v. Union of India and others** [AIR 2005 Karnataka 253]. In the above case, the applicant submitted an application from Mumbai and all the facts and events giving rise to the action arose outside the territorial jurisdiction of the High Court of Karnataka. In that context, the Karnataka High Court held that it has no jurisdiction. There is no similarity to the facts of the case in hand. Thus, the objections based on jurisdiction are found to be untenable. So, I am of the view that this Court is having territorial jurisdiction to entertain the writ petitions.

9. The next question is whether Registration Committee has power to review its own decision. The learned counsel for the petitioner, Shri P.B.Krishnan, placing reliance on the judgment of the Hon'ble Supreme Court in **Kalabharathi Advertising v. Hemant Vimalnath**

-:8:-

Narichania [2010 (3) KLT 986] submits that unless the statute/rules so permit, the review application is not maintainable at the instance of Registration Committee to review its own order. No doubt it is settled proposition of law that judicial or quasi judicial authorities have no inherent power to review its own decision unless it is so permitted under the statute/rules. Their power of review is creation of statute and in the absence of any statutory provision, it cannot be exercised. This Court is of the view that there is a subtle distinction in exercise of power by administrative authority and quasi judicial authority/judicial authority. In the realm of discharge of administrative function, though administrative authority may exercise the power akin to quasi judicial authority by a judicious approach in deciding granting/refusing licence, it is in fact, not similar to the power exercised by the quasi judicial/judicial authority. The underlying distinction of such power is based on the nature of purpose for

-:9:-

which the power is exercised. If the statute is enacted to regulate the activity, the object of the statute is to regulate the activity and in that process, it may decide the right of a person to obtain a licence in terms of the regime to achieve the object under the statute, that exercise of power is nothing but exercise of administrative adjudication. On the other hand, in quasi judicial function, the object is to decide the right and liability of the parties to the lis. Though in administrative function the authority has to follow certain principles having trapping of quasi judicial function, nevertheless, that adjudicatory decision in the context of regulatory regime will not cease to have the character of an administrative decision. The administrative function is being carried on from time to time and day-to-day to regulate activity for which power is conferred. If exercise of such power is fettered by an embargo of review, there would be an administrative paralysed, resulting in dysfunction of the governmental

-:10:-

machineries. Thus, the embargo to exercise power of review by quasi judicial authority/judicial authority unless it is conferred under the law is not applicable to the administrative authority in exercise of adjudicatory power for deciding a question relating to the grant of licence.

10. Therefore, mere presence of certain attributes of quasi judicial function or judicious approach in taking decision for licence would not convert administrative adjudication to that of a quasi judicial adjudication. Under Section 21 of the General Clauses Act, an authority is conferred with a statutory power exercisable in the like manner, to add, amend, vary or rescind any orders so issued. In ***State of Kerala v. K.G.Madhavan Pillai*** [(1988) 4 SCC 669] the Hon'ble Supreme Court held that general power of rescindment under the General Clauses Act has to be determined in the light of the subject-matter, context and the express grant of the General Clauses Act in the matter. Therefore, if statute confers only an administrative

-:11:-

adjudication in granting licence, the power under Section 21 of the General Clauses Act can be exercised. However, when power is conferred exclusively for quasi judicial or judicial function, power of review cannot be exercised unless it is specifically conferred under the statute. In ***R.R.Verma v. Union of India*** [(1980) 3 SCC 402], the Hon'ble Supreme Court held as follows:

The principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable only where the government exercises quasi-judicial powers vested in it by statute and not to purely administrative decisions. Government must be free to alter its policy or its decision in administrative matters and cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Moreover, if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a court.

-:12:-

11. In ***Western India Match Co. Ltd. v. Workers Union*** [1970 (1) SCC 231] it was held by the Hon'ble Supreme Court in the context of Section 10(1) of the Industrial Disputes Act, 1947 as follows:

“.....In the light of the nature of the function of the Government and the object for which the power is conferred on it, it would be difficult to hold that once the Government has refused to refer, it cannot change its mind on a reconsideration of the matter either because new facts have come to light or because it had misunderstood the existing facts or for any other relevant consideration and decide to make the reference. But where it reconsiders its earlier decision it can make the reference only if the dispute is an industrial one and either exists at that stage or is apprehended and the reference it makes must be with regard to that and no other industrial dispute.”

12. The High Court of Karnataka in ***Ramakanyadevi v. State*** [AIR 1980 Kant 182], in a case where the State Government rejected an application from the petitioners therein seeking exemption of a cinema site, a question

-:13:-

that arose was whether fresh application could be considered by the Government and it was held that the Government can exercise its power without being bound by earlier orders.

13. The Registration Committee under the Central Insecticides Board is exercising its power in the matter of grant of licence, in order to regulate import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to human beings. In that process, administrative decision is taken to secure the above objectives while application for licence is being considered under the Insecticides Act. Thus, the Registration Committee has to consider the application for licence with reference to parameters to secure the objectives of the Act. The Insecticides Act also provides appellate remedy in case of non registration or cancellation under Section 10 of the Insecticides Act. It also confers powers of revision to the Central Government at anytime, to satisfy the legality and propriety of the decision.

-:14:-

The nature of power that is conferred under the Insecticides Act really spells out that power is vested with the Registration Committee to protect the safety of human beings and animals while an applicant is allowed to import, manufacture, sell or stock insecticides in India. No doubt once a decision is taken by the primary authority, any decision thereon either in appeal or revision is a quasi judicial function exercised by the appellate authority or the Central Government as the case may be. Those authorities cannot review their own decision unless it is specifically conferred under the statute. However, it is to be noted that any administrative authority exercising a review of its earlier decision has to act in a *bona fide* manner or based on fresh or additional materials. It has to find out reasons for exercising power of review. If any power is exercised not for a *bona fide* reason, such a decision would be against the principles of fairness and would be considered as arbitrary. In the present case, the applicant points

-:15:-

out there was an error in appreciating toxicity of the product. This was considered by the Registration Committee and the Registration Committee after deliberation issued Ext.P2 order. I do not find any reason to treat the above decision as arbitrary or tainted with *mala fides*. This Court, of course, is not concerned about the merit of the decision as same was subjected to appeal before the appellate authority and appeal has to be decided on merits. The power of this Court invoking judicial review is only to examine the decision making process and not against the decision itself. Thus, this Court holds that the Registration Committee has the power to take Ext.P2 decision, and the challenge against Ext.P2 on the ground of jurisdiction is repelled.

14. The next point that falls for consideration is whether the petitioner has any *locus standi* to challenge the procedure adopted by the Registration Committee to review the earlier decision. The Insecticides Act provides a substantive right in the

-:16:-

matter of protection to human beings and also procedural right to question the decision of the Registration Committee by way of revision under Section 11 before the Union Government. However, it is to be noted that no right is available to a third party to have audience in the process of registration. Thus, the question arises whether a third party can question the procedure in relation to a decision making process under the Statute. The right of action necessarily pre-suppose a legal right. It must be vested with a person who challenges the decision. No doubt, the third party has a right to question the merit of the decision in the sense the Insecticides Act protects any danger to human being. The procedural certainty in the process of decision making process is to ensure legal certainty and to its finality. The principles governing power of review, *res judicata*, *estoppel* are available to the party to the proceedings to ensure procedural safeguards protecting their legal right in decision making process and to put certainty and

-:17:-

finality in the process. On conclusion, they acquire a protected right against re-opening unless it is permitted under the law. That means a correlating duty is cast upon a person, who is bound by the decision, to accept the decision and obliges him to act in favour of the person entitled. A third person, who was not a party to the proceedings to the decision cannot claim a protected right against re-opening of procedure which was concluded before the decision making authority. It is to be noted, in law, the plea based on review, *estoppel*, *res judicata* etc. creates only imperfect right based on the principles of finality and legal certainty and more or less it is related to procedure than to a substantive right. Thus, the writ petitioner, who is a third party to the decision making process before the Registration Committee, cannot question any procedure adopted by the Registration Committee reviewing its decision. The plea of bar of review is not available to a third party to the decision making process. Thus, I am of the view that the petitioner has no

-:18:-

right to question the decision making process being a third party. The right available to the petitioner under law is only to question the merit of the decision of the Registration Committee which is a substantive right. Accordingly, I do not find any merit in the challenge made by the petitioner based on the plea of bar of review.

15. In view of the discussions as above, I do not find any merit in W.P.(C).No.28454/2013, therefore, the same is dismissed. W.P.(C).No.14962/2014 is disposed of directing the appellate authority to dispose Ext.P8 appeal within a period of four months after hearing the petitioner and the applicant. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms