

* HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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+ WRIT PETITION No. 19949 of 2012

% 24th November, 2015

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M/s. Surya Bio Products, Motheyvari
Choultry Street, Powerpet, Eluru, West
Godavari District, Rep. by its partner, Mr.
Ch. Pavan Kumar.

... Petitioner...

AND

\$ The Commissioner & Director of
Agriculture, (Licensing Officer-The
Insecticides Act, 1968), O/o Commissioner
& Director of Agriculture, Andhra Pradesh,
Near L.B. Stadium, Hyderabad and two
others.

... Respondents...

! Counsel for the Petitioner : Sri D. Srinivas Prasad

^ Counsel for the respondents 1 & 2 : Learned Government
Pleader for
Agriculture

^ Counsel for the 3rd respondent : Sri B. Narayana Reddy

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> Head Note:

? Cases referred:

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.19949 OF 2012

ORDER:

The proceedings dated 02.03.2012 issued by the 1st respondent-The Commissioner & Director of Agriculture, Hyderabad, revoking the manufacturing license issued to the petitioner's firm under the Insecticide Act, 1968 (in short "the Act"), is challenged before this Court.

The facts in brief for the purpose of disposal of this case are as under:

The petitioner is a partnership firm engaged in the business of manufacturing of various insecticides like 1) Trichoverma Viride, 2) Pseudomonas Fluorescens and 3) Bacillus Thuringiensis varkurstaki, after obtaining registration under Section 9(3B) of the Act from the Directorate of Plant Protection, Quarantine & Storage, Ministry of Agriculture, Government of India-3rd respondent. The licensing authority-1st respondent had issued license on 17.07.2008 and the same is being renewed from time to time and the 2nd respondent while granting registration also authenticated and approved the label and leaflet for the said bio-insecticides in English and Hindi and with an intention to market the said products in the State of Andhra Pradesh, the petitioner also got the label and leaflet printed in Telugu along with English and Hindi.

While things stood thus, on a representation said to have been made by one N.V. Srinivas Rao, claiming to be member of the East Godavari Congress Committee, the Joint Director of Agriculture (PP), Office of the Joint Director of Agriculture, West Godavari District claims to have submitted a report dated 31.10.2011 to the 1st respondent. Basing on the said report a show cause notice was issued on 09.01.2012 to the petitioner,

which reads as under:

“As per the report of the Deputy Director of Agriculture (PP) O/o Joint Director of Agriculture, West Godavari District vide reference 3rd cited, it was observed that there are variation in the labels & leaflets of the product Trichoderma Viride 1% WP used by the firm when compared with the CIB & RC certificate as the firm got label claim for Pulses, Chilli Seedlings, Cow Pea, Sesamum and Pigeon pea. However, the firm mentioned Groundnut crop in the label in addition to the crops approved in labels. The Ground nut crop is not approved by the CIB & RC in the labels. Further, they have also mentioned on the leaflet stating that Treat (Trichoderma Viride 1% WP) will control all the sol borne diseases in all the crops.

It is violation under Section 3k (i)(i) and (v) and rules of Insecticides and Insecticides Act, 1968 and rules there under. Thus, it is established that you have manufactured the insecticides duly violating the provisions of Insecticides Act and rules made there under.

Therefore, you are hereby directed to show cause why action should not be initiated against you on the above said violations. Your explanation should reach this office within (15) fifteen days from the date of receipt of this notice, failing which action will be taken as per the material available on records.”

Petitioner submitted a detailed explanation dated 25.01.2012 denying the allegations in the show cause notice and further submitted that the crop mentioned in question was printed on the label by mistake and oversight by the printing press which is unintentional and the same was corrected. Therefore, the petitioner prayed for dropping of the proceedings, as the petitioner has been doing business from the last three or four years and there was no violation of any of the terms of the license granted.

The explanation dated 25.01.2012 submitted by the petitioner is as follows:

“Further, I submit that as pointed out in the show

cause notice vide ref. cited that I have mentioned the Groundnut crop also on the label in addition to the crop approved.

In this regard, I humbly submit that the crop mentioned in question was printed on the label by mistake and oversight by the printing press which is un-intentional. The crops name was printed in English and Telugu and the Hindi version of it is as per the recommendations of CIB & RC only. Immediately after knowing the error, the label and the entire printed material was burnt out and the fresh containers containing the revised labelling as per the CIB & Rc were got printed and sold, not even a single unit of misprinted carton were sold.

I am to bring to your kind notice that I am in the business for last (4) years and at any point of time I have not deviated the norms prescribed in the license or in the Certificate issued by the CIB & RC and based on my track, the Commissioner & Director of Agriculture, A.P., was kind enough to renew the license till 31.12.2011.”

After considering the explanation submitted by the petitioner, 1st respondent issued impugned proceedings with a finding that the explanation submitted by the petitioner was not convinced, which is the act of the violation of the unit seemed to have occurred not out of sudden and further it was held that the violation can only be considered as wilful and planned and violation of Section 3k(i)(iv) and (v) of the Act and the Rules made there under. Thus, the petitioner’s manufacturing license was cancelled for the said violations. Writ petition came to be filed questioning the said proceedings.

It is not necessary to set out the grounds as mentioned in the affidavit, for the reason the issue in the case lies in a very narrow compass viz., whether there is any contravention of the provisions of the Act and the Rules made there under and if so, whether the action of the 1st respondent in cancelling the

manufacturing licence is sustainable?

Heard Sri Srinivas Prasad, learned counsel for the petitioner and the learned Government Pleader for respondents 1 and 2, and Sri B. Narayana Reddy, learned counsel for 3rd respondent.

In terms of the show cause notice the allegations made against the petitioner, the same can be summarised in three parts:

1) that the firm mentioned the groundnut in the label in addition to the crops approved for manufacturing. As per the license granted by the Central Insecticides Board and Registration Committee, the product 'Trichoderma Viride 1.0% WP' is approved for the use of controlling Root rot (*Macrophomina phaseolina*) on pulses (Cowpea, Mung bean, urad bean), Sesmum, Pigeon pea, Wilt (*Furarium oxysparum*) on Cowpea! Damping off (*Pythium aphanidermatum*) on chilli seedlings only. The same is not approved for usage for groundnut crop. The petitioner firm in the promotional leaflet had printed that the product 'Trichoderma Viride 1.0% W.P. (Bio-Fungicide)' is used to controle root rot, damping-off and wilt diseases of groundnut, pulses (cowpea, mung bean, urad bean), Chilli Seedlings, Sesamum and Pigeon Pea. Even in the leaflet printed in Telugu also it is mentioned the same 'Trichoderma Viride 1.0% W.P. (Bio-Fungicide)' can be used for groundnut crop. Thus, there is a misrepresentation on the part of the petitioner;

2) that it is also printed in the leaflet claiming that TREAT (Trichoderma) will control of the soil burn diseases in all the crops; and

3) that there is a violation of Section 3 (k), k(i) k(iv) and k(v)

of the Act.

A counter affidavit has been filed by the Commissioner and Director of Agriculture, Hyderabad, repudiating the allegations made by the petitioner and further stated that if the petitioner is aggrieved with the impugned order he has alternative remedy by way of an appeal to the Principal Secretary to the Government, Food & Agriculture Department. It is also stated that though petitioner made representation to the Government for revoking the licence, there is no appeal filed by the petitioner. The contentions in the imputed order and the show cause notice were reiterated in the counter.

To resolve the issue raised in the writ petition, it is useful to notice few of the provisions of the Act and the Rules. Those are: Sections 3(e), 3 (h), 3(i), 3(k), 3 (k)(i), 3(k)(iv), 3 (k)(v), 3(l), 14 (1) (b) and 14(2) of the Act. So far as relevant Rules are concerned, 16, 17, 18 and 19 are relevant Rules. At the outset, though allegation is made about violation of Section 3(k)(i)(iv) and (v) read with relevant Rules, it may be noted that there is no specific rule as such was mentioned. What all has been stated in the show cause notice and in the impugned order is that there is a violation of Section 3(k)(i)(iv) and (v) and thus there is a contravention. Section 3 defines various terms and expressions used in the Act as under:-

Section 3 (k) – Misbranded – an insecticide shall be deemed to be misbranded –

- (i) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents; or
- (iv) if any word, statement or other information required by or under this Act to appear on the label is not displayed thereon in such conspicuous manner as the other

words, statements, designs or graphic matter have been displayed on the label and in such terms as to render it likely to be read and understood by any ordinary individual under customary conditions of purchase and use; or
(v) if it is not packed or labelled as required by or under this Act;

The definition Section by itself does not fasten any liability. The purpose of definition section is only to elicit and define the parameters within which the same to be understood. The allegation in the present case is that petitioner had violated Section 3(k)(i) (iv) and (v) of the Act. A close reading of stated provisions read with definition of 'label' does not indicate any violation on the part of the petitioner. The word 'label' has been defined under Section 3 (h) as 'any written, printed or graphic matter on the immediate package and on every other covering in which the package and on every other covering in which the package is placed or packed and includes any written, printed or graphic matter accompanying the insecticide'. This necessarily leads to a conclusion that assuming a leaflet as a written representation, the same should necessarily to form part of the product and in the same packing. It is only then such leaflet would satisfy the description of label. If there is any misrepresentation in such label, the same would fall within the mischief of Section 3(k) (i) as 'misbranded'. If the leaflet by itself does not satisfy the term 'label' the same would not fall within the definition of Section 3(k) of the Act. Making of every or any representation contained in leaflet such as misprinting of the product, though, may amount to misrepresentation but does not amount to misbranding.

Though in the present case allegation of violation of Section 3 (k) (iv) and (v) of the Act is made, in what manner there is a

violation has not been set out either in the show cause notice or in the impugned order. In other words, the revocation of licence is on the ground of sole allegation of the product name 'groundnut' having been included in the leaflet. Rule 16 of the Insecticides Rules, 1971 (in short "the Rules") prohibits sale of insecticide in huge form unless the same is packed and labelled in accordance with the Rules. Packing parameters have been set out in Rule 17 of the Rules. Rule 18 of the Rules sets out what a leaflet should contain in package. Rule 19 dealt with the manner of labelling. There is no specific allegation of any of these Rules. Though an omnibus allegation of violation of these Rules, a close reading of relevant Rules contained in Rules 16 to 19, leave no manner of doubt that though not said in direct terms what all authority meant was by including groundnut as a product in the leaflet, there is a representation by the petitioner that the insecticide TREAT is also useful for the groundnut crop. Thereby the leaflet by stating something extraneous is not in conformity with Rule 18. The question of violation of Rule 18 would arise only when there is a finding given by the authorities on enquiry that the leaflet is in violation of the definition of Section 3 (h) 'the label' read with Section 3 (k) of the Act. In other words, there is no specific allegation in the present case that there is a violation of Rule 18.

In totality of the case though there is a clear admission on the part of the petitioner that the groundnut has been included in the leaflet, in the absence of a finding that such leaflet would satisfy the definition of 'label' as defined in the Act, the extreme act of revocation of licence of manufacturing unit would certainly violate the right of the petitioner to carry on the business requiring and thus violative of Art. 19(1)(g) of the Constitution, besides being illegal and arbitrary. Thus, the impugned order is liable to be

set aside.

Accordingly, the proceedings dated 02.03.2012 issued by the 1st respondent-The Commissioner & Director of Agriculture, Hyderabad, is set aside. However, considering the fact that the license granted in favour of the petitioner is required to be renewed for every two years in terms of Rule 11 of the Rules, and admittedly as on today the license granted in favour of the petitioner expired, the petitioner may approach the 1st respondent seeking renewal of the license by paying prescribed fee and as and when the petitioner makes such an application for renewal of the license by paying prescribed fee, the same shall be considered treating the petitioner's license as subsisting as on the date of making application, subject to petitioner satisfying the other conditions as prescribed under law, within six weeks from the date of petitioner making of such application.

With the above direction, the writ petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

CHALLA KODANDA RAM, J

Dated: 24.11.2015

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