

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CWP No. 17230 of 2011 (O&M)
Date of decision: March 3, 2015

Haryana Pesticides Manufactures' Association and others
...Petitioners
Versus

Central Insecticide Board & Registration Committee and others
...Respondents

(2) CWP No. 14750 of 2012 (O&M)

Pesticides Manufactures' Association of Haryana and others
...Petitioners
Versus

Central Insecticide Board & Registration Committee and others
...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Arun Nehra, Advocate,
for the petitioners.

Ms. Ranjana Sahi, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. Both the writ petitions address the grievance of the Pesticides Manufacturer Association through its members about certain regulations imposed by the authorities constituted under the Insecticides Act, 1968 (for '**the Act**') and the rules thereunder. The two classes of objections that are common to both the writ petitions are (i) that applications by a manufacturer have to be restricted to three certificates of registration in a trimester; and

(ii) every manufacturer who seeks for certificate of registration shall also give along with his application an affidavit of the “technical manufacturer” of insecticide that he will make this supply to the petitioner during the tenure of the certificate of registration. A third subsidiary point that arises for consideration in CWP No. 14750 of 2012 is an issue brought by the importers of insecticides, who are fettered with further restriction of how the certificate of registration will be processed, if the source of supply is different from the source for which the registration of the insecticide has already been made.

2. The objection regarding the requirement of giving an affidavit of the technical grade manufacturer is set out on three grounds, namely, (i) it will throttle the choice of the supplier from whom the insecticide manufacturer wants to purchase; (ii) it robs the element of competition amongst supplier and pegs the insecticide manufacturer to deal only with one supplier and be made to pay higher price; and (iii) the best products amongst the suppliers cannot be purchased, if the choice were to be restricted only to one person from whom the affidavit is given.

3. I have freely used some expressions loosely to distinguish two types of manufacturers as: 'technical manufacturer' and 'insecticide manufacture'. They would require to be clarified that there are no such terminologies in the Act but used as such by the counsel to distinguish two types of manufacturers recognized under the Insecticides Rules, 1971. Rule 2 (g) defines a manufacturer means any person who manufactures insecticides and includes a formulator of the insecticides. The formulator is the person who adds the compounds by chemical process and he is called 'technical manufacturer', the way the counsel employed the terms. The

manufacturer who adds 'inerts' and mixes the produced with the chemical formulation that qualifies as a registered insecticide is called as 'insecticide manufacturer'. The counsel for the petitioner would have me believe that 'technical manufacturer's is capital intensive and engages in lot of research and expenses while the person that mixes inerts and creates the end product may be even a small time operator with modest capital.

4. I have seen through the rules requirement of the application for registration of insecticide. There are three types of registration contemplated under the Act:-

“(i) First type is the registration of Insecticides itself as defined under Section 3 (e) of the Act. Any person desiring to import or manufacture any insecticides is required to apply to the Registration Committee appointed under Section 5 of the Act for registration of such insecticide as provided for under Section 9 (3) of the Act. The said Statutory Committee is required to hold an inquiry and only on being satisfied that the insecticide to which the application relates conforms to the claim made by the importer or the manufacturer regarding the efficacy of the insecticide and its safety to human beings and animals, and thereafter the insecticide can be registered by the said Committee.

(ii) Second type of registration of insecticide is provisional registration under Section 9 (B) of the Act. A provision has been made in respect of insecticides being introduced in India for the first time. Section 9 (3) (B) of the Act provides for provisional registration of imported insecticides for a period of

two years in such cases.

(iii) Third type of registration contemplated under Section 9 (4) of the Act is when an insecticide is already registered under Section 9 (3) of the Act. Section 9 (4) provides that in case when insecticide is registered on an application, any person desiring to import or manufacture the insecticide or engaged in the business of import or manufacturing the insecticide shall make an application for registration. The third type of registration of insecticides under Section 9 (4) of the act in pesticides industry is known as “Me too Registration”. Thus the scheme of Section 9 of the Act clearly provides for registration of insecticides which is granted by the committee after thorough inquiry and after ensuring that the insecticides registered are not harmful to human beings and animals and also meet all other requirements as laid down in the Act.”

The application for registration of insecticides contained in form I of the 1st schedule of the Rules requires the applicant to state the name and address of the supplier, if he is duly authorized by the manufacturer. It is also required to state that the insecticide is registered in the country of manufacturer or from which the supply is expected to be made. We are examining the situation of insecticide manufacturer who apply for a certificate of registration where the insecticide has been registered on the application of any person and the person who is desiring to import or manufacture is bound to obtain the certificate on presentation of the application on payment of the prescribed fee. An obligation to issue the certificate of registration under Section 9 (4) of the Act arises only in a

situation where the insecticide has already been registered. If the application itself is required to name the supplier, it is fair enough that there is a condition imposed that the supplier will give an affidavit that he will effect the supply during the period when the certificate is to operate. If the technical manufacturer's product conforms to certain specifications regarding quality and safety of the products, it ought to be taken as necessary concomitant for the Registration Committee to examine that there is an assured source of supply to the person who applies for the registration. I will not find the requirement of securing an affidavit from the supplier as unreasonable. It has surely an object to secure, namely, that a technical manufacturer who is a manufacturer and whose product has been certified as a registered insecticide shall alone be the person who will supply to the applicant and the certificate is not misused in any sense. The objection regarding throttling the choice or settling for non-competitive higher price or a poor product must go into reckoning of the applicants even before he applies for the registration of the certificate. If there is a requirement under the Rule to spell out the name and address of the supplier, it cannot be merely left to be a cosmetic exercise. The name and address of the supplier given shall be of a person who has committed himself to supply to the applicant and that commitment can obtain only through an affidavit as insisted by the authority. I will not, therefore, find anything improper about such a condition.

5. The second objection is imposition of ceiling of three applications in trimester. The counsel for the respondents refers to Section 5 (5) of the Act which states that Registration Committee shall regulate its own procedure and the conduct of business to be transacted by it. The

procedure must be understood as a procedure for doing any of the acts which the said section itself provides. Section 5 (1) empowers the Committee to register the insecticides after scrutinizing the formulae and verifying claims by the importer or the manufacturer as regards the efficacy and safety to human beings and animals. It also allows for the Committee to carry out any other functions which the Act stipulates. If in the course of its function, it spells out the manner of scrutinizing the chemical formulae or assessing efficacy or safety, then it can be taken as competent to lay down condition in the manner which clause 5 provides. The procedural regulation cannot extend to restriction of applications that can be given by a insecticides manufacturer. It would literally fetter the rights of manufacturers and traders which are guaranteed under Article 19 (1) (g) of the Constitution. The justification proffered by the said authority is that only persons who are serious in the business make applications and there is no undue crowding of applications by just a few persons which might delay the consideration of applications of other persons which might delay the consideration of the applications of other persons. By way of illustration, the counsel appearing for the respondents states that if the first applicant has applied for 100 certificates on 100 registered insecticides, the second applicant for just one product may be unduly delayed till consideration of 100 applications and, therefore, there is a justification for limiting the number of applications that could be given by an insecticide manufacturer. I can understand this logic for a case where a person applies for registration of insecticide under Section 9 (3) where the applications might involve assessment of efficacy of chemicals etc. It could take a long time and processing applications for each product might also involve fairly a long

time. That is the reason why the Act itself provides for a reasonably long time of 12 months before when a registration of insecticide could be issued from the date of the receipt of the application under Section 9 (3). Sub-section 3 (B) allows for a provisional registration made for a period of two years with the condition that may be imposed. Both under sub-section 3 and sub-section 3 (B), the expression used is that the Committee “may” issue a certificate. Sub Section 4 employs a different language, in that, it mandates the certificate to be issued, since this is of a certificate for an insecticide which is already registered and where appraisal would have already been done. That is the reason why sub-section 4 does not even stipulate a time limit in the manner that is provided under Section 3 or 3 (B). It is, therefore, expected that certification is a matter of course within a short time and as a matter of right without any detailed appraisal. It cannot support, therefore, any restriction of any number of applications which is neither in the Act nor under the rules. The administrative instructions that have been given to regulate its own procedure is specious, for, it does not regulate. On the other hand, it restricts the trade and hence violative of Article 19 of the Constitution. I uphold the contention of the petitioner and hold that the restriction imposed in the number of applications to 3 in a trimester cannot be sustained.

6. The point taken in CWP No. 14750 of 2012 is against policy spelt out that in the matter of consideration of certificate of registration for a registered insecticide sought to be imported, the procedure will be under Section 9 (3) but not under Section 9 (4), if the import is from a source different than the registered insecticide, namely of a product from another source of supply. The argument by the petitioner is that sub-section 4 does

not make any reference to the source of supply at all and hence the impugned instruction is untenable. Sub-section 4 of Section 9 of the Act reads as under:-

“(4) Notwithstanding anything contained in this section, where an insecticide has been registered on the application of any person, any other person desiring to import or manufacture the insecticide or engaged in the business of, import or manufacture thereof shall on application and on payment of prescribed fee be allotted a registration number and granted a certificate of registration in respect thereof on the same conditions on which the insecticide was originally registered.”

7. This sub-section, it can be noticed provide for a fast track where the insecticide has been registered on the application of a person. It contemplates therefore that a person who applies for certificate on a 'me-too basis' merely falls in the line to claim the registration because the insecticide is already registered on assessment of the formulation, its efficacy and safety. Though sub-section 4 does not make any reference to the registered insecticide of a particular technical manufacturer, I will understand that every registered insecticides is of a formulation brought through unique process. Same compound formulations may come through different processes. The product through different processes may not necessarily have same safety or efficacy. There may be impurities in one process which may not be in another registered insecticides brought through a technical manufacturer tested before registration under Section 9 (3) ought to be qua the said manufacturer only. To that extent source of supply becomes very relevant. Another technical manufacturer having the same

formulation may still have a different efficacy for the product which is brought through another process. Indian patent law protects not merely process patent but also product patent. The end product may enjoy some protection so that the registered insecticide of the manufacturers shall not be replicated by another manufacturer even through a different process. Consequently, it is perfectly tenable to put a 'me-too' application of a technical manufacturer through a different source is treated as an application under Section 9 (3) for consideration. The registration is to the products, namely, of the insecticide in its particular formulation and not the registration of a product of the particular manufacturer, who is identified supplier from a particular source. Consequently, any other person desiring to import or manufacture insecticide cannot be compelled to show anything more than he is importing a registered insecticide.

8. In fine, the stipulation as regards the number of applications that could be filed by an independent applicant to be restricted in trimester is not tenable. The requirement of an importer to go through a process under clause 3, if it is not from the very same source for the registered insecticide is upheld. The challenge contained to these two clauses is upheld. The requirement imposed by the authorities that the technical manufacturer shall give an affidavit of supply during the tenure of the certificate of registration is a reasonable demand consistent with the requirement of disclosure of the name of the supplier in the application and hence the challenge to such requirement ought to fail and hence rejected.

9. CWP No. 17230 of 2011 is partly allowed. Decision of Registration Committee in its 313th meeting held on 8.11.2010 restricting the number of applications under Section 9 (4) of the Act is quashed. The

consent of requirement of affidavit of manufacturer of technical grade pesticide formulation is upheld. CWP No. 14750 of 2012 is dismissed.

March 3, 2015
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(K.KANNAN)
JUDGE