

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

**LPA No.701 of 2015 (O&M)  
Date of decision: 07.05.2015**

Haryana Pesticides Manufacturers Association and others

....Appellants

Versus

Central Insecticide Board and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant  
Hon'ble Mr. Justice P.B. Bajanthri**

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

**P.B. Bajanthri, J.**

In this Letter Patent Appeal, Appellants-Haryana Pesticides Manufacturers and others have questioned the order of the learned Single Judge dated 03.03.2015 passed in CWP No. 17230 of 2011 (O&M) read with Annexure P1 namely decision taken in 313<sup>th</sup> RC Meeting (Special) held on 08.11.2010 on report of C.D. Mayee Committee constituted by DAC.

Appellants-Haryana Pesticides Manufacturers Association and others (for short 'Association') are aggrieved by the restriction imposed to 3 applications and the consent of requirement of affidavit of manufacturer of Technical grade pesticides formulation stipulated for the purpose of registration of insecticides. The reasons behind issuing revised guidelines

for registration of insecticide firm etc., is that the concerned authorities have made surprise check of manufacturing facilities of pesticides in some states and it was found that even among those registrants under Section 9(4) of the Insecticides Act, 1968 who had actually established manufacturing units, several did not have adequate infrastructure facilities to manage such hazards substances/raw materials relating to insecticides. Thus authorities have issued order of cancellation of certificate of registration against M/s Jyoti Insecticides, Charkhi Dadri, District Bhiwani, Haryana and M/s Mahamaya Life Sciences Private Limited, Bahadurgarh, Haryana and some of the others industries. The registrants were violating Act, rules and guidelines in respect of insecticides business/trade. Thus, there was a threat to the safety and efficacy in dealing with the insecticides to human beings and animals. In this background, respondents proceeded to review the registration process by imposing various conditions.

Before adverting to the issue involved in this appeal the very object and reasons behind introducing the Insecticides Act, 1968 is relevant and its relevant extracts reads as under:-

***“STATEMENT OF OBJECTS AND REASONS***

*In the months of April and May, 1958, many persons died in the States of Kerala and Madras as a result of food-poisoning arising from contamination of food with a poisonous organo-phosphorous insecticide 'Parathion' (Faldol). There were also cases of persons who fell seriously ill though not fatally on account of food-poisoning in the same areas. The Government of India appointed the Kerala and Madras Food-poisoning Cases Enquiry Commission under the chairmanship of Justice J.C. Shah, then a Judge of the High Court of Bombay and now a Judge*

*of the Supreme Court, to inquire into and report on the circumstances in which the foodstuffs came to be contaminated and the measures to be taken against similar occurrences in future.*

*2. The recommendations of the Enquiry Commission were accepted by the Government. The Government then appointed an Inter-Ministerial Committee to suggest measures to give effect to the recommendations made by the Commission. Accordingly, the Inter-Ministerial Committee suggested certain short-term and long-term measures. The short-term measures suggested by the Committee have already been given effect to. The long-term measures suggested by the Commission envisaged the enactment of legislation to regulate the manufacture, sale, storage, transport, distribution and use of insecticides including pesticides, herbicides or fungicides in the country.*

*3. Subsequent to the poisoning cases in 1958 in Kerala and Madras, cases of food-poisoning were also reported in 1962 in Malda and Dinajpur Districts of West Bengal and Assam, respectively, as a result of which 450 persons were crippled by paralysis. Contamination of wheat flour with “tri-ortho-cresylphosphate” was the cause of poisoning. Cases of food-poisoning were reported in Bombay in January and February 1963, as a result of ingestion of rice stored in bags which were reportedly sprayed with 5 per cent. Benzene Hexachloride. Reports have also been received about cases of poisoning due to indiscriminate use of organo-phosphorous compounds like Parathion, Malathion, Diazinon, Baytex etc, which are said to be marketed in concentrated form for extermination of bed bugs. Cases of poisoning resulting from the use of copper sulphate among the shoe-workers of Agra have also been brought to notice.*

*4. This bill follows the recommendations of the Commission referred to in paragraph 2. The salient features*

*of this Bill are as follows:-*

- (i) establishment of a Central Insecticides Board and the setting up of a Committee called the 'Registration Committee' for the purpose of granting certificates of registration to persons desiring to import or manufacture insecticides;*
- (ii) licensing of persons desiring to manufacture, sell or exhibit for sale or distribute any insecticide;*
- (iii) establishment of a Central Insecticide Laboratory for carrying out certain functions under the Act;*
- (iv) prohibition of import, manufacture, sale, etc., of insecticides in contravention of the provisions of the Act;*
- (v) regulation of transport and storage of insecticide so as to prevent cases of accidental contamination of food with insecticides;*
- (vi) provision for taking immediate action by way of prohibition of sale, distribution or use of any insecticide where it is found that the sale distribution or use of the insecticide is being done in such a way as to involve risk to human beings or vertebrate animals and where immediate action is necessary”.*

Some of the provisions of the Insecticides Act, 1968 (for short 'Act') are also relevant for the purpose of adverting to the issue involved in the matter which are as follows. Section 5 deals with Registration Committee by which among other powers it has been entrusted to regulate its own procedure and the conduct of business to be transacted by it vide sub-Section (5) of Section 5 which reads as follows :

**“(5) Registration Committee shall regulate its own procedure**

**and the conduct of business to be transacted by it”.**

Section 9 deals with registration of insecticides which deals with the mode of registration of insecticides i.e. applying for registration of insecticides before the Registration Committee. Section 36 of the Act empowers power to Central Government to make rules. These rules were framed qua the Insecticides Rule, 1971 (for short 'Rules'). Rule 2(g) relates to manufacturer definition namely '(g) manufacturer means any person who manufactures insecticides and includes formulator of the insecticides. Rule 3 relates to functions of the Board and Rule 4 relates to functions of Registration Committee. An extract of Rule 4 is reproduced hereunder:-

***“4. Functions of Registration Committee – The Registration Committee shall, in addition to the functions assigned to it by the Act, perform the following functions, namely:-***

- (a) specify the precautions to be taken against poisoning through the use or handling of insecticides;*
- (b) carry out such other incidental or consequential matters necessary for carrying out the functions assigned to it under the Act or these rules.”***

Rule 10(4A)(i) relates to licenses for sale, etc. of insecticides. (4A)(i) reads as follows:-

***“(4A)(i) Every person shall along with his application for grant or renewal of a licence to undertake operation or sell, stock or exhibit for sale or distribute insecticides, file a certificate from the principal whom he represents or desires to represent in Form VI D.”***

The appellants are an association who are in the business of insecticides. They were aggrieved by the certain conditions stipulated for the purpose of registration. Firstly, the condition relating to registration of

number of applications for the purpose of registration is limited to 3; Secondly, the consent of requirement of affidavit of manufacturer of technical grade pesticides formulation. The appellants thus laid their challenge before this Court by way of a writ petition.

The learned Single Judge has quashed the aforesaid first condition, namely, restricting the number of applications for the purpose of registration of insecticides to 3 and insofar as second condition, namely, the consent of requirement of affidavit of manufacturer of technical grade pesticides formulation is concerned, has been upheld.

The registration of pesticides is processed by respondent No.1 on the basis of application submitted by the applicant along with fee and data on different parameters like chemistry, toxicity, bio-efficacy, packaging and processing depending upon the requirement. In order to set right various loopholes in obtaining raw materials and its use in manufacturing and distribution of pesticides with reference to various instances come across by the Government. A Committee was constituted to review the process of registration of pesticides. In this regard report was submitted by the Committee to stream line the registration of pesticides to prevent any misuse of pesticides. The impugned decision taken in the 313<sup>th</sup> Registration Committee Meeting (Special) dated 08.11.2010 is the off shoot of the Committee wherein various guidelines have been taken into consideration for the purpose of regulating the registration of insecticides including restricting the number of applications and the consent of requirement of affidavit of manufacturer of technical grade pesticides formulation.

Counsel for the appellants vehemently submitted that power of

the Registration Committee to formulate certain conditions for the purpose of registration of insecticides is without authority of law and it is in violation of Section 36(2)(e), (h). It was further contended that impugned conditions stipulated in Annexure P1 is in violation of Rule 10 (4A) (i). It was further contended that Registration Committee has no powers except to register with reference to the provisions provided in the Act read with Rules. Lastly, it was contended that right of business is seriously affected due to imposition of impugned conditions, hence it is unconstitutional.

Section 36 of the Act relates to power of Central Government to make rules. Whereas, Sections 36(2)(e) and (h) pertain to form of application for registration and grant of licence for insecticides. An extract of sub-Section 2(e) and (h) are reproduced hereunder:-

*“36. Power of Central Government to make rules;-(1) The Central Government may, after consultation with the Board and subject to the condition of previous publication, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Act:*

*Provided that consultation with the Board may be dispensed with if the Central Government is of opinion that circumstances have arisen which render it necessary to make rules without such consultation, but in such a case the Board shall be consulted within six months of the making of the rules and the Central Government shall take into consideration any suggestions which the Board may make in relation to the amendment of the said rules.*

*(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe-*

- (e) the form of application for registration of an insecticide and the particulars relating thereto;*
- (h) the form of application for the grant of licence and*

*the particulars relating thereto;*

Learned counsel for the appellants has not pointed out in what way the impugned conditions are in violation of Section 36(2) (e), (h). The aforesaid provision is relating to only the form of application for registration of insecticides for issuance of licences therefore, the aforesaid contention is not at all tenable. So also Rule 10(4A) (i) relates to form VID. Form VID relates to issuance of principal certificate in which the concerned person is required to give a declaration as follows:

**“I shall obtain the insecticides shown in the principal certificate from the source/sources which are stated above. I am aware that if, I obtain these insecticides from source/sources other than those stated above, this should be contravention of the Insecticides Act, 1968 and rules made thereunder”.**

Even the aforesaid provision is not violated as contended by the learned counsel for the appellants-Association.

Registration Committee does possess the power and the appellants-Association plea is not tenable in this regard for the reasons that sub-Section (5) of Section 5 of the Insecticides Act, 1968 provides that “the Registration Committee shall regulate its own procedure and the conduct of business to be transacted by it”. Read with it, Rule 4 of the Insecticides Rules, 1971 provides for functions of Registration Committee and specifies the precautions to be taken against poisoning through the use or handling of insecticides and read with such other incidental or consequential matters necessary for carrying out the functions assigned to it under the Act or the rules. In view of the aforesaid provisions the power of the Registration

Committee are very wide to regulate its own procedure and the conduct of the business to be transacted by it, therefore, the contention of the appellants-Association that Registration Committee has no power to prescribe any conditions for the purpose of registration can not be accepted. At the same time, it is to be noted that decision of the committee has been questioned without challenging the constitution of committee. The appellants-Association contended that by the impugned conditions right to business is affected seriously as they have to purchase raw materials from a particular person who may misuse the undertaking given to a particular person by means of charging exorbitant for raw materials etc. A citizen has no fundamental right to trade or business in insecticides and other related raw materials which are dangerous to human beings and animals if the ratio in mixing is not in accordance with technical know. Government/concerned authority may impose certain restrictions for the purpose of regulating such trade or business of insecticides. It is ultimately policy of the Government in stipulating conditions for issuance of certificate/registration of insecticides, since those who are in the business of insecticides are likely to misuse the registration certificate by purchasing raw materials from different persons. In other words, fixing liability for violation of the insecticides Act and Rules would be difficult and cumbersome procedure. In order to overcome the said hurdles the subject conditions have been stipulated. Therefore, we are of the view that impugned conditions, namely, restricting the number of applications to a person and the consent of requirement of affidavit of manufacturer of technical grade pesticides formulation by a person for registration, is in the larger public interest. Since the trade is

relating to dangerous raw materials which if not in appropriate ratio known to the technical persons, then there is ever likelihood of danger to the human beings or to the animals. In order to prevent untoward incidence in using raw materials relating to insecticides, that the impugned conditions have been stipulated for the purpose of registration, which are very reasonable. We, however, do not express any final opinion as regard to the validity of the condition struck down by the learned Single Judge and observations made in relation thereto be treated as tentative only.

Having regard to the facts and circumstances, we are of the view that the impugned conditions are policy decision of the Government which are reasonable and cannot be interfered. Moreover, these conditions are totally in conformity with the statement of object and reasons of the Act and Rules pertains to Insecticides.

State can prohibit every form of dealing in intoxicants, for, there is no fundamental right to trade or business in intoxicants. There is also no fundamental right to deal in dangerous chemicals, as held by the Apex Court in number of decisions, including the followings:-

(a) **Har Shankar and others versus Excise and Taxation Commissioner and others (1975)1 SCC737**

(b) **Bihari Lal Jaiswal, etc. versus Commissioner of Income-Tax, etc. (1996)1 SCC 443**

(c) **State of A.P. And others, etc. versus McDowell and Co. and others etc. (1996)3 SCC 709**

(d) **Partap Pharma (Pvt.)Ltd. Versus Union of India (1997)5 SCC 87**

Licensing system is a restriction on the right to carry on trade or business. The Apex Court has ruled that if proper norms are laid down and

adequate safeguards are provided in the procedure to ensure that licensing authority follows a proper procedure, the restrictions if any, would be reasonable. Reference may be made in this regard to :-

**(a) Vishnu Dayal Mahendra, Pal, M/s versus State of U.P., (SC)1974(2) SCC 306,**

**(b) Chandrakant Krishnarao Pradhan versus Jasjit Singh, the Collector of Customs, Bombay and others 1962 AIR(SC) 204,**

**(c) Harakchand Ratanchand Banthia and others versus Union of India and others, 1969(2) SCC 166**

For the reasons afore stated, we do not find any merit in this appeal which is accordingly dismissed but without any order as to costs.

**(SURYA KANT)  
JUDGE**

**(P.B. BAJANTHRI)  
JUDGE**

**07.05.2015**  
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