

In the High Court of Punjab and Haryana at Chandigarh

CWP No.12536 of 2011(O&M)

Date of decision: February 04, 2016

M/s Biostadt India Ltd.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Gaurav Chopra, Advocate
(in CWP Nos.13327 of 2011 and 17668 of 2012)
Mr. Anand Chhibbar, Senior Advocate with
Ms. Riya Bansal, Advocate
(in CWP Nos.12536 and 14116 of 2011)
Mr. Arun Nehra, Advocate and Mr. Sant Kashyap, Advocate
(in CWP No.14321 of 2011)
Mr. P.K. Ganga, Advocate
(in CWP Nos.16532 of 2011)
Mr. Dinesh Arora, Advocate
(in CWP No.16185 and 20044 of 2011)
Mr. Rakesh Verma, Advocate and
Mr. Manish Verma, Advocate,
(in CWP Nos.2006,4776 of 2012, 1855,12222, 13737, 11231,
11822, 10329 of 2013)
Ms. Ranjana Shahi, Advocate for UOI.
Mr. Naveen Kaushik, Additional Advocate General, Haryana.
Mr. Nilesh Bhardwaj, Deputy Advocate General, Punjab.
Mr. Pawan Kumar Mutneja, Advocate and
Mr. Vikramjeet Singh Mahal, Advocate for respondent No.4
(in CWP Nos.12536,13327,14116,14321, 16532 of 2011)

RAJESH BINDAL, J.

This order shall dispose of a bunch of Writ Petitions bearing CWP Nos.12536,13327,14116,14321,16185,16532,20044 of 2011; 2006, 4776,17668 of 2012 and 1855,10329,11231,11822,12222,13737 of 2013.

The petitioners herein are manufacturers of bioproducts, which are claimed to be substitute of insecticides and fertilizers but not strictly falling in the definition of insecticides as contained in the Insecticides Act, 1968 (for short 'the Act') and the Fertilizer (Control) Order, 1985(for short 'the Order'). Some of the petitioners got permission from the States of Punjab and Haryana for selling their products whereas some had not sought.

The case set up by the petitioners is that the product(s) manufactured by them being not covered under the Act and the Order, the State has no authority to stop the production and sale thereof. It is further submitted that the samples of the products being manufactured by the petitioners were got tested in different laboratories controlled by the Government of India and the report is that none of the products being manufactured by the petitioners fall in the definition of 'insecticides' and 'fertilizer'.

Learned counsel for the petitioners fairly submitted that whenever they wish to sell their products in the States of Haryana and Punjab, they will inform the Director General, Agriculture Haryana and Director, Agriculture Punjab, whichever is the competent authority. It was further submitted that the Officer Incharge to regulate and control agriculture in the respective districts in the States of Punjab and Haryana

may take samples of the products being sold by the petitioners for the purpose of testing in any of the authorized laboratory to find out as to whether the products being sold by them fall within the definition of 'insecticides' or 'fertilizer'. They shall also be at liberty to see whether the product is of any use and is not merely a waste being sold in fancy packaging by misleading the buyers, namely, the poor and many of the illiterate farmers. The Laboratories can also test as to whether the contents of the products are in any way harmful for the soil or the contents thereof can be transmitted to the agriculture produce grown in the fields with use of the products being manufactured by the petitioners. It was further submitted that in case any of the products manufactured and sold by the petitioners is either found to be violating the provisions of the Act or the Order and it is found that the products fall within the term 'insecticides' or 'fertilizer' they may be liable for action in terms of the provisions in the Act and the Order. In the other eventualities, as noticed above, State shall be at liberty to take appropriate action in accordance with law.

Learned counsel for the State of Punjab submitted that the matter regarding legislation or for issuance of guidelines, for production and sale of bioproducts is pending consideration with the Government of India for the last more than eight years. In the absence thereof, it is difficult to regulate the same. The Government of India may be directed to expedite the matter and either amend the Act or the Order concerned.

Learned counsel appearing for the Union of India submitted

that she will apprise the competent authority about the seriousness of the matter and press upon them to consider the same and take appropriate steps, whichever required for the purpose of proper regulation of the products being manufactured by the petitioners or any other manufacturer in certain specified time.

She further submitted that the samples of the products manufactured by the petitioners were got tested in various laboratories controlled by the Government of India and it was found that their products, the samples of which were drawn did not fall within the definition of 'insecticides' or 'fertilizer'. She further submitted that if any other products are being manufactured by the petitioners, the same will also have to comply with the provisions of the Act or the Order.

After hearing learned counsel for the parties, the present petitions are disposed of with the following directions:

Any manufacturer producing any bioproduct claiming to be substitute of 'insecticides' or 'fertilizer' but not strictly covered under the definition of 'insecticides' or 'fertilizer' shall apply to the Director General Agriculture, Haryana and Director, Agriculture Punjab, in respective States seeking permission for selling its products in the States concerned giving particulars of the products being manufactured or imported for sale. The brand name and the contents of the products shall be supplied. Before granting permission, the Competent Authority in the State shall be entitled to get the samples tested in lab and in case it is found that the products being manufactured by any person seeking to sell the same does not fall within the terms 'insecticides' or 'fertilizer',

the necessary permission shall be granted.

The samples are to be tested from any Government of India Laboratory or any laboratory in agriculture University in the respective States. The product is also required to be tested regarding its efficacy and safety for human and animals. The Chief Agriculture Officers in their respective districts shall be entitled to draw samples of the products being sold as bioproducts as substitute for 'insecticides' or 'fertilizer' in two States for the purpose of testing to find out as to whether there is any violation of the provisions of the the Act or the Order or any other law, order or instructions applicable.

In case any of the manufacturer, importer or sellers violates either provisions of the Act or the Order or any other law, order or instructions in the process of manufacture and sale of the products, the State shall be at liberty to take appropriate action against the defaulter.

As far as State of Haryana is concerned, earlier permissions were granted to some of the manufacturers for selling their products, in those cases any order passed withdrawing those permissions without alleging violation of either the provisions of the Act or the Order or any other instructions shall be deemed to have been set aside. In case the manufacturers wish to sell any other product, may be with a different brand name which earlier was not mentioned in the application filed, they will have to seek further permission for that product. The cases where permission had not earlier been sought or granted, the parties concerned are at liberty to file applications.

The State Government shall be entitled to fix a fee to be

deposited by an applicant seeking permission as a reasonable regulatory fee. Besides this, applicant shall be liable to pay actual laboratory charges for testing of the samples.

It is expected that the concerned authorities shall take appropriate action in the matter pending with it, as stated by the counsel for the State of Punjab, expeditiously.

The petitions are disposed of accordingly.

(RAJESH BINDAL)
JUDGE

February 04, 2016
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