

\$~39 & 40

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) 4778/2016 & CM No.19931/2016 (for stay).

P.I. INDUSTRIES LTD.

..... Petitioner

Through: Mr. Rajeev K. Virmani, Sr. Adv. with
Mr. Ashish Kothari, Mr. Ankit
Virmani and Mr. J.P. Sahu, Advs.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Ravi Prakash, Mr. Aditya Dewan,
Mr. Rajiv and Mr. Sumit Rajput,
Advs. for R-1 to 3/UOI.
Mr. R.K. Khanna, Sr. Adv. with Mr.
Rajesh Aggarwal, Mr. Mridul
Aggarwal, Mr. Praveen Kumar, Ms.
Shaefali Jain and Ms. Anandita
Sharma, Advs. for R-4.

AND

+ W.P.(C) 4780/2016 & CM No.19935/2016 (for stay).

P.I. INDUSTRIES LTD.

..... Petitioner

Through: Mr. Rajeev K. Virmani, Sr. Adv. with
Mr. Ashish Kothari, Mr. Ankit
Virmani and Mr. J.P. Sahu, Advs.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Ravi Prakash, Mr. Aditya Dewan,
Mr. Rajiv and Mr. Sumit Rajput,
Advs. for R-1 to 3/UOI.
Mr. C.U. Singh, Sr. Adv. with Mr.
Sunip Sen, Mr. Abhishek Roy, Mr.
Shehzad Najam-Es-Sani and Ms.
Neha Khandelwal, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

30.05.2016

1. On 23rd May, 2016, when these petitions came up first before this Court, the following order was passed:

“3. The petitions impugn the registration granted by the respondent No.3 Registration Committee under the Insecticides Act, 1968 to the respondent No.4 in each of the petitions viz. Insecticides India Ltd. & M/s Gharda Chemicals Ltd. for indigenously manufacturing Bispyribac Sodium Technical 95% Min (BST) and for importing molecular form of which the petitioner has been granted permission under the Act.

4. The petitioner has preferred the statutory appeal to the respondent no.2 Joint Secretary, Department of Agriculture, Cooperation and Farmers Welfare along with an application for interim relief to restrain the respondent no.4 in each of the petitions from proceeding with the manufacture but which appeal is not being taken up for hearing.

5. Hence this petition.

6. The counsel for the respondents no.1 to 3 appearing on advance notice states that the Guidelines under which the respondent no.4 in each of the petitions has been granted registration are under challenge before the Gujarat High Court and the learned Single Judge vide order dated 26th April, 2016 has clarified that the decisions which would be taken by the Registration Committee under the new Guidelines will not be implemented and shall be subject to the further orders which may be passed by the Court. It is further informed that on appeal, a Division Bench of the Gujarat High Court has stayed the said order. It is tentatively stated that the appeals are not being heard for the said reason.

7. Prima facie it appears that either the registration itself should not have been granted awaiting the judgment of the

Gujarat High Court and if the registrations are being granted, then the appeals should have also been heard and non-hearing by the respondent no.2 appears to be totally unjustified.

8. The counsel for the respondents no.1 to 3 seeks time to obtain instructions in this regard.”

2. In furtherance thereof, the counsel for the respondents No.1 to 3 Union of India (UOI) and Registration Committee under the Insecticides Act, 1968 states that the statutory appeals preferred by the petitioner before the Appellate Authority, within the meaning of Section 10 of the said Act, are listed for hearing on 8th June, 2016. He further states that though ordinarily the time taken in disposal of an appeal is 3-4 months but the Appellate Authority will dispose of the appeals of the petitioner within six weeks time.

3. The counsels for respondent No.4 in each of the petitions namely Insecticides India Ltd. and M/s Gharda Chemicals Ltd. also appear and the senior counsels appearing for them state that no advance copy was furnished to them though it is their right which would be affected by the orders sought in these petitions. It is further contended:

(i) that the Registration Certificates which have been issued to the respondent No.4 in each of the petitions are in pursuance to the orders of the Gujarat High Court which is fully seized of the matter;

(ii) that though a Special Leave Petition (SLP) has been preferred by the petitioner to the Supreme Court against the order of the Division Bench of the Gujarat High Court and was also mentioned today morning to be taken up urgently but was not allowed in view

of the matter being listed before the Division Bench of the Gujarat High Court on 23rd June, 2016 and on 22nd June, 2016 before the Single Judge of that High Court;

(iii) that in fact the petitioner has refused to give the “technical” of the “formulation” for which the petitioner has obtained registration, inspite of repeated requests of the Registration Committee and with a view to curb competition and in violation of the directions of the Registration Committee;

(iv) that the Registration Committee upon failure of the petitioner to submit the ‘technical’ has independently satisfied itself as to the chemical equivalence of the ‘technical’ submitted by the respondents No.4 and has granted the registration thereafter only;

(v) that the procedure adopted by the Registration Committee in granting registration to the respondents No.4 in each of the petitions is in accordance with the new Guidelines which are under challenge in the proceedings before the Gujarat High Court;

(vi) that the petitioner has also made an application for intervention before the Gujarat High Court;

(vii) that there are doubts as to the very maintainability of the appeals preferred by the petitioner and as to the maintainability of the application for interim relief.

4. Per contra, the senior counsel for the petitioner with reference to the minutes of the 364th special meeting of the Registration Committee and the minutes of the 365th meeting of the Registration Committee has contended

that the Registration Certification in favour of the respondents No.4 in each petition has been given on “*prima facie*” establishment of chemical equivalence and on conjectures and merely on the ground that “there seems to be no safety concern” when in fact chemical equivalence is required to be established scientifically and that this is to the detriment of the farmers and the consumers of the agricultural produce for which the said insecticide is being used and without conducting any inquiry or investigation on that. It is contended that no chemical equivalence has been established and it is further contended that if it had been established, it would have been recorded in the minutes of the 365th meeting of the Registration Committee. It is explained that while the formulation for which the petitioner has been granted the Registration Certificate is of 10% strength, the registration granted to the respondent No.4 in each petition is of 95% strength and the two cannot be equated. It is yet further contended that the petitioner *inter alia* urging all the said aspects has also sought interim relief from the Appellate Authority and hearing of which appeals has been scuttled since 12th / 13th May, 2016.

5. I have enquired from the counsel for the respondents No.1 to 3 UOI and Registration Committee, why the Appellate Authority cannot consider the appeals as well as application of the petitioner for interim relief before 8th June, 2016, as it is felt that all the aforesaid technical aspects are to be gone into by the statutory Appellate Authority in the first instance rather than by this Court.

6. The counsel for the respondents No.1 to 3 UOI after obtaining instructions states that the Appellate Authority would take up the matter as and when directed by this Court and deal with the same expeditiously. It is

also stated that in the appeals as preferred, the respondent No.4 in each petition are not shown as a party.

7. The senior counsels for the respondent No.4 in each petition state that though they have received the papers of these petitions but are without the appeal papers.

8. The senior counsel for the petitioner under instructions states that the entire paper book of the appeals, including the documents filed therewith shall be handed over to the counsels for the respondents No.4 today itself.

9. Accordingly, the petitions are disposed of with the following directions:

(I) The petitioner to supply the entire papers filed with the Appellate Authority to the counsel for the respondent No.4 in each of the petitions namely Mr. Rajesh Aggarwal, Adv. and Mr. Sunip Sen, Adv.;

(II) The respondents No.4 shall also have a right of hearing before the Appellate Authority;

(III) The Appellate Authority is requested to take up the appeals for consideration on 2nd June, 2016 at 1500 hours;

(IV) The petitioner as well as respondents No.4 to appear before the Appellate Authority at the said date and time;

(V) The Appellate Authority, besides considering the appeals, shall also consider the prayer of petitioner for interim relief and if of the view that no orders can be made in the appeals immediately, pass a reasoned order on the prayer for interim relief on or before 15th June, 2016;

(VI) All contentions would remain available to the parties before the Appellate Authority;

(VII) Needless to state that this order shall not prejudice the contentions of the respondents No.4, as to the maintainability of the appeals and / or as to the empowerment of the Appellate Authority to pass interim orders or come in the way of the Appellate Authority, after hearing the parties, taking a view on the said aspect also.

No costs.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

MAY 30, 2016

bs ..