

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

1.

CWP No.4533 of 2018
Date of Decision: 01.03.2018

Crop Care Federation of India and others

. . . . Petitioners

Vs.

The State of Punjab and others

. . . .Respondents

2.

CWP No.4535 of 2018

UPL Ltd. and others

. . . . Petitioners

Vs.

The State of Punjab and others

. . . .Respondents

3.

CWP No.2957 of 2018

Sinochem India Company Pvt. Ltd.

. . . . Petitioner

Vs.

State of Punjab

. . . .Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Arun Nehra, Advocate, and
Mr.Sant Kashyap, Advocate,
for the petitioners (in CWP No.4533 of 2018).

Mr.Ashok Aggarwal, Sr. Advocate with
Mr.Alankar Narula, Advocate
Mr.Nitin Sinha, Advocate, and
Mr.Mukul Aggarwal, Advocate,
for petitioner No.1 (in CWP No.4535 of 2018)

Mr.Alankar Narula, Advocate and
Mr.Nitin Sinha, Advocate,
for petitioner No.2 (in CWP No.4535 of 2018)

Mr.Akshay Bhan, Sr. Advocate with
Mr.Alankar Narula, Advocate
Mr.Abhishek Sanghi, Advocate and
Mr.Nitin Sinha, Advocate,
for petitioner No.1 (in CWP No.4535 of 2018)

Mr.Dibya Nishant, Advocate, for the petitioner
(in CWP No.2957 of 2018)

Mr.Atul Nanda, Advocate General, Punjab with
Mr.H.S. Sitta, AAG, Punjab.

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of 3 petitions bearing *CWP No.4533 of 2018* titled as “*Crop Care Federation of India and others Vs. The State of Punjab and others*” [for short ‘the 1st petition], *CWP No.4535 of 2018* titled as “*UPL Ltd. and others Vs. The State of Punjab and others*” [for short ‘the 2nd petition] and *CWP No.2957 of 2018* titled as “*Sinochem India Company Pvt. Ltd. Vs. State of Punjab*” [for short ‘the 3rd petition], as the issue involved in all these petitions is common.

The petitioners have challenged the validity of the memo dated 30.1.2018 and the subsequent letter dated 12.02.2018 by which the Department of Agriculture and Farmers Welfare, Govt. of Punjab has stopped the sale of 20 insecticides, provided in a Schedule, with immediate effect. It is also directed therein that the competent authority shall review all the licenses given for these insecticides and further not to issue any fresh license for these insecticides from 1.2.2018. In the letter dated 12.2.2018, the Director Agriculture has directed all Chief Agricultural Officers, Punjab to impose ban on sale and stock of insecticides in the State of Punjab in view of the action taken under Section 27 of the Insecticides Act, 1968 [for short ‘the Act’] and also directed that all the dealers and distributors to return the stock of the banned insecticides to their respective manufacturers and the endorsement in licenses to sell the insecticides made in respect of the banned

insecticides be deleted from such licences and the said banned insecticides be not permitted to sell to the farmers. The aforesaid action was taken by the State of Punjab in view of the recommendation of the registration committee and the report of the Punjab Agricultural University, Ludhiana and PSFC, who have reported that the sale/use of the said 20 insecticides is harmful to both human beings and animals and also affecting the environment.

The petitioners have challenged the impugned memo dated 30.01.2018 and letter dated 12.02.2018 on the ground that the said action has been taken in contravention to Section 27 of the Act. Section 27 of the Act, read as under: -

*“27. Prohibition of sale, etc. of insecticide
for reasons of public safety*

1. If, on receipt of a report under Sec. 26 or otherwise, the Central Government or the State Government is of opinion, for reasons to be recorded in writing, that the use of any insecticide specified in sub-clause (iii) of Cl.(e) of Sec. 3 or any specific batch thereof is likely to involve such risk to human beings or animals as to render it expedient or necessary to take immediate action then that Government may, by notification in the official Gazette, prohibit the sale, distribution or use of the insecticide or batch, in such areas, to such extent and for such period (not exceeding sixty days) as may be specified in the notification pending investigation into the matter :

Provided that where the investigation is not completed within the said period, the Central Government or the State Government, as the case may be, may extend it by such further period or periods not exceeding thirty days in the aggregate as it may specify in a like manner.

2. If, as a result of its own investigation or on receipt of the report from the State Government, is satisfied that the use of the said insecticide or batch is or is not likely to cause any such risk, it may pass such order (including an order refusing to register to register the insecticide or canceling the certificate of registration, if any, granted in respect thereof) as it deems fit, depending on the circumstances of the case.”

After notice, learned Advocate General, Punjab has put in appearance and has argued that the notification for the purpose of banning the sale of the said 20 insecticides is likely to be issued. He has also submitted that the action has been taken under Section 27 of the Act not after taking the report under Section 26 of the Act but otherwise on the ground that the use of the said 20 insecticides is involving risk to human beings or animals and the action is being taken to protect their lives.

Learned counsel for the petitioners, *inter alia*, contends that the State Government may take any action for prohibiting the sale/distribution or use of the said insecticides but it has to be in terms of Section 27 of the Act which provides that such ban can be imposed only by way of notification in the official gazette and not simply by issuance of a memo.

At this stage, it may be clarified that I am only deciding the issue as to whether the ban could have been imposed by issuance of a memo or it could have been imposed by issuance of a notification in the official gazette?

Section 27 of the Act provides power to the State Government to prohibit the sale/distribution or use of insecticides or batch in such areas to such extent for such period (not exceeding sixty days) by way of a notification in the official gazette, for which the reasons have to be recorded in writing, that the use of the insecticides is likely to involve such risk to human beings or the animals. Section 26 of the Act provides that the State Government may, by notification in the official Gazette, require any person or class of persons specified therein to report all occurrences of poisoning (through the use or handling of any insecticide) coming within his or their cognizance to such officer as may be specified in the said notification.

Since learned Advocate General, Punjab has admitted at the Bar that the action has not been taken on the basis of the report prepared under Section 26 of the Act rather it has been taken otherwise, therefore, the Court is not going into the issue of the report prepared under Section 26 of the Act rather the Court is only looking into the fact as to whether the memo issued by the State Government, followed by the letter dated 12.2.2018, is in accordance with the provisions of law much less the provisions of Section 27 of the Act or not?

In my opinion, the State Government though has power to prohibit the sale/distribution or use of such insecticides which could cause any kind of harm to the human beings or animals but it can be banned only

by way of a notification published in the official gazette and not by merely issuing memo/letter as has been done in the present case. As I have already observed that at this stage, since the Advocate General, Punjab has stated that the State is issuing the notification in terms of Section 27 of the Act, therefore, the issue is decided only to the extent that the memo *per se* is not legal in view of the mandate of Section 27 which provides for issuance of notification in the official gazette for prohibition of sale/distribution or use of the insecticides.

In view of the aforesaid facts and circumstances, all the three writ petitions succeeds and the memo dated 30.1.2018 and letter dated 12.2.2018 are hereby set aside.

It is needless to mention here that the State Government would be well within its right to issue notification under Section 27 of the Act, if so advised and the petitioners would also be well within their rights to challenge the said notification, if so advised, in accordance with law.

A photocopy of this order be placed on the files of other connected cases.

01.03.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No