

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**NOTICE OF MOTION NO.162 OF 2019
IN
WRIT PETITION NO.1766 OF 2019**

Crop Care Federation of India & Ors. ... Applicants

IN THE MATTER BETWEEN:

Crop Care Federation of India & Ors. ... Petitioners

Vs

The State of Maharashtra & anr. ... Respondents

Mr.V.R. Dhond, Senior Advocate with Mr.Akash Rebello and Mr.M. Shah i/b K.K. Vyas for the Applicants/Petitioners

Mr.G.W. Mattos, AGP, for Respondents

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: JULY 11, 2019

P.C.:

1. This Notice of Motion is taken out by the original petitioners. They have prayed for an interim direction restraining the respondents from insisting on getting an affidavit from the licence holders/companies desirous of marketing, selling, distributing, etc. insecticides in Maharashtra stating that they will not market their

products under a brand name that is different from the brand name of the original registration holder.

2. Briefly stated, the record would suggest that the petitioners are engaged in a business of manufacturing, selling and in some cases marketing insecticides. The business of manufacturing, selling and marketing insecticides is governed by regulatory controls contained in the Insecticides Act, 1968. The petitioners claim that they fulfill all the requirements of law and submit to all conditions of licence granted to them for their respective purposes. They have no serious objection to the respondents – authorities verifying such details as and when need so arises. Their central grievance is that by virtue of impugned communications, the State Government authorities under the Agricultural Department, have prohibited marketing and selling of a single insecticide through multiple agencies under different brand names.

3. Having heard the learned Counsel for the parties and having perused the documents on record, we prima facie notice that section 9 of the Insecticides Act, 1968 which pertains to registration of insecticides would control any activity of manufacturing or import of an insecticide in India. Without a

licence granted by the competent authority, such activity could not be carried on. Likewise, section 13 of the Insecticides Act, 1968 pertains to grant of licence to a person for manufacturing, selling, stocking or exhibiting for sale any insecticide. Sub-section (1) of section 13 of the Insecticides Act provides that any person desiring to manufacture or to sell, stock or exhibit for sale or distribute any insecticide or undertake commercial pest control operations with the use of an insecticide may make an application to the Licencing Officer for grant of a licence. Under sub-section (3) of section 13, the Licencing Officer may grant the licence on such conditions as may be prescribed. Thus, the activity of storing and selling insecticides is also governed by the said statutory provision.

4. In exercise of the powers contained in the Insecticides Act, 1968, Insecticide Rules, 1971 have been framed. The Rules contain detailed provisions for grant of licence for manufacturing, storing, marketing and selling of insecticides. Chapter V of the Insecticide Rules, 1971 pertains to packing and labelling. Detailed provisions have been made by virtue of which there are certain mandatory requirements concerning packing and labelling of such insecticidal products. Rule 16 of the Insecticides Rules, 1971

provides that no person shall stock or exhibit for sale or distribute or cause to be transported any insecticide unless it is packed and labelled in accordance with the provisions of the Rules. In terms of sub-rule (1) of Rule 17, every package containing the insecticides would be of a type approved by the Registration Committee. Sub-rule (1) of Rule 18 mandates that the packing of an insecticide shall include a leaflet containing the details provided therein. Rule 19 pertains to manner of labelling. The Rule makes detailed provisions what a label of a container in which the insecticide is packed, must contain which includes the name of insecticide i.e., a brand name or a trade mark under which it is sold as well as the common name thereof.

5. We have no doubt that the petitioners and all manufacturers and marketers of insecticides must conform to these regulatory measures. Even the petitioners do not argue to the contrary. Their only grievance is that since long, there has been consistent practice of a single insecticidal formulation manufactured by a manufacturer being marketed by multiple agencies under separate individual brand names in different packages which the State Government by impugned circulars wishes to prohibit. They point

out that the stand taken by the Maharashtra State is not shared by any other State. In all other States, this is freely permitted. They also point out that this stand is contrary to the statement made by the Government Counsel before this Court in Writ Petition (L) No.621 of 2018 and connected Petition in which in order dated 7.3.2018 it was recorded as under :

“
 ...
 2. The learned A.G.P. appearing on behalf of Respondent Nos.1 and 2 on instructions from the officer who is present in person submits that by the impugned order the State is not prohibiting the Co-marketing but only insisting for the compliance of the provisions of the Insecticides Act, 1968 and Insecticide Rules, 1971. As regards the allegations of Respondent Nos.1 and 2 that the Petitioners are not adhering the provisions of the Insecticides Rules, 1971, suffice it to say that the Respondent Nos.1 and 2 are free to take appropriate action in accordance with law, if there is any breach of the rules as alleged.
 ...”

6. Prima facie, we are unable to see any provision under the Insecticides Act, 1968 or the Rules made thereunder, which debars a manufacturer of an insecticide selling the product through different agencies under different brand names, of course, as long as all statutory requirements under the said Act and the Rules contained therein for manufacture, sale, stock, store and exhibiting the said product which would include the labelling on the container

containing such insecticide, are strictly complied with. We also do not prevent the State authorities from verifying such details as and when the need so arises.

7. Under the circumstances, subject to these observations, by way of interim relief, the respondents are prevented from enforcing the policy (if there is one flowing from the impugned circulars) preventing a manufacturer from selling the insecticide through multiple agencies as marketers in different brand names.

8. With these directions, the Notice of Motion is disposed of.

9. At this stage, the learned AGP requested that this order may be stayed to enable the Government to carry it in appeal. Accordingly, this order is stayed for a period of four weeks from today. This would however mean that the previous interim order of not taking any coercive steps which has merged in the final order in the Notice of Motion would continue to operate till such period.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)