

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

* * *

CWP-13442-2020

Date of decision: 18th September, 2020

Crop Care Federation of India and others

.....Petitioners

Versus

The State of Punjab and another

....Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present : Mr. Arun Nehra, Advocate and Mr. Sant Kashyap, Advocate
for the Petitioners.

Mr. Vikas Mohan Gupta, Additional A.G., Punjab.

AVNEESH JHINGAN, J.

1. The present petition is filed seeking the quashing of notification No. S.O./ 26/C.A. 46/1968/S.27/2020, dated 14th August, 2020 issued exercising powers under Section 27 (1) of the Insecticides Act, 1968 (hereinafter referred to as 'Act') prohibiting sale, stock, distribution and use of 9 insecticides mentioned therein.
2. Impugned notification is reproduced below:

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**PART III
GOVERNMENT OF PUNJAB**

**DEPARTMENT OF AGRICULTURE AND FARMERS'
WELFARE (AGRICULTURE-II BRANCH)**

NOTIFICATION

The 14th August, 2020

No. S.O. 26/C.A.46/1968/S.27/2020:- Whereas the State Government is of the opinion that the sale, stock, distribution and use of insecticides indicated in the Table given below, is not in the interest of rice growers in view of the reasons recorded below; namely:-

- (i) that there is a risk of higher pesticide residues than Maximum Residual Level (MRL) fixed by the competent authority in the rice grains on account of use of these agro-chemicals;
- (ii) that the Punjab Agricultural University (PAU), Ludhiana has recommended alternative agrochemicals to control pests of rice in Punjab;
- (iii) that a concerted campaign was launched in the last two years under which farmers were made aware about the hazards of such chemicals to human beings. In addition, awareness was also created amongst the pesticide companies as well as dealers against the use of such chemicals on Basmati rice in Punjab;
- (iv) that in spite of all these efforts, these chemicals are still being used which is clear from the fact that Punjab Government Food Safety Laboratory, Kharar indicated that out of fifty one samples, nine samples of rice contained the residue of these chemicals above the MRL value. Similarly, Punjab Biotechnology Incubator Agri and Food Testing Laboratory, Sahibzada Ajit Singh Nagar, Punjab; NABL accredited laboratory of Government of Punjab, in its report submitted that seven number of samples were found to contain pesticide residue in rice above MRL value;
- (v) that the Punjab Rice Millers and Exporters Association has also reported that many samples got tested by them contain the residue value of these pesticides much above the MRL values in Basmati Rice. The Association requested for ban of these agrochemicals to save the heritage Basmati produce of Punjab and to ensure hassle free export of rice to other countries; and
- (vi) the quality of Basmati rice is very crucial for its export to foreign countries and the price of Basmati rice in the market accruing to the farmers is also dependent on the quality of the grain. In addition, the safety of the grain to the human beings is of paramount important in the agro eco-system;

Whereas in view of the above, it is imperative to prohibit the sale, stock, distribution and use of the insecticides indicated in the Table given below, on rice crop in the State, being potential constraint in export and consumption of rice, especially Basmati rice; and

Whereas the alternatives to the said insecticides, which are low in residue effect, are available in the market.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 27 of the Insecticides Act, 1968 (Central Act No.46 of 1968), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to prohibit the sale, stock, distribution and use of all types of formulations of the insecticides, indicated in the Table given below, in the State of Punjab for a period of sixty days on

the paddy crop, including Basmati, from the date of publication of this notification in the Official Gazette, namely:-

TABLE

Serial No.	Name of Insecticide
1	Acephate
2	Triazophos
3	Thiamethoxam
4	Carbendazim
5	Trycyclazole
6	Buprofezin
7	Carbofuron
8	Propiconazole
9	Thiophinate Methyl
XX	XX

Exercising powers under Section 27 (1) of the Act, the sale, stock, distribution and use of the insecticides given in the table above was prohibited for 60 days from the date of the publication of the notification for use on paddy crop including *Basmati*.

3. Sections 26 and 27 of the Act read as under:-

“26. Notification of poisoning.

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.

27. Prohibition of sale, etc., of insecticides for reasons of public safety.

(1) If, on receipt of a report under section 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 clause (e) of section 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 area, 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, and after consultation with the Registration Committee, the Central 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 the insecticide or cancelling the certificate of registration, if any, granted in respect thereof) as it deems fit, depending on the circumstances of the case.”

4. Under Section 26, the State Government can notify a person or a class of person to report to a specified officer, all occurrence of poisoning by use or handling of insecticides, coming to their cognizance.
5. In case immediate action is necessitated pending the investigation of the matter, Section 27 (1) empowers the State Government or the Central Government to issue a notification prohibiting sale, stock, distribution or use of insecticides or its batch, for not exceeding 60 days, “pending investigation into the matter”, if in the opinion of the Central/State Government its use is likely to involve risk to human beings or animals. There is an obligation of recording reasons in writing. The opinion can be formed either on receipt of a report under Section 26 or otherwise.
6. The proviso to sub-section (1) of Section 27 states that where the investigation is not completed within the period specified in the notification, the prohibition or ban may be extended for a further period or periods not exceeding 30 days in the aggregate.
7. Under sub-section (2) of Section 27, where the Central Government, on its own investigation or on the receipt of a report from the State Government, after consultation with the Registration Committee, is satisfied that the use of the said

insecticides is likely or not likely to cause risk, it may pass orders “as it deems it fit depending on the circumstances of the case”.

8. Mr. Arun Nehra, learned Counsel for the Petitioners laying challenge to the impugned notification argued that the State Government for considering the minimum residual level of chemical (MRL) is relying upon European standards and not Indian standards, and that this was impermissible. The contention is that the term ‘competent authority’ used in the notification should relate to the Indian standards. It is submitted that prohibiting the use of insecticides specified in the impugned notification only on paddy and not on other crops, shows that the said insecticides are not harmful to humans. The grievance is that the notification was issued in violation of principles of natural justice, as neither any opportunity of hearing was granted nor the details of material relied upon were furnished to the Petitioners to offer an explanation. Reliance is placed upon Section 9 (3) of the Act to argue that safety to human beings and animals was already considered while granting registration to the insecticides in question and there is no occasion to proceed under Section 27 (1) of the Act.
9. It is contended that only the State of Punjab has issued a notification prohibiting the insecticides specified in the impugned notification, whereas there is no such prohibition in other rice-growing states. It is submitted that MRL is only a trading standard and not a toxological one and cannot, therefore, form the basis for exercise of powers under Section 27 (1) of the Act as that requires the satisfaction that the insecticide sought to be banned involves a “risk to human beings or animals.” It is further contended that with the Central Government also having issued draft orders under Section 27 (2) of the Act proposing the ban of six of the nine insecticides mentioned in the impugned notification, there cannot be a further exercise of power in relation thereto by the State Government under Section 27 (1) of the Act. Lastly, reliance is placed on the decision of Andhra Pradesh High Court in *Syngenta*

Crop Protection Pvt. Limited rep. by its Commercial Manager v. Government of Andhra Pradesh rep. by its Principal Secretary, Agriculture Department 2007 CriLJ 4773, to contend that there cannot be repeated bans on the same insecticides under Section 27 (1) of the Act.

10. Mr. Vikas Mohan Gupta, Additional Advocate General appearing for the respondents defended the impugned notification by pointing out that it is for a limited period. For further investigation in terms of Section 27 (1) of the Act, the State Government has by a notification dated 28th August, 2020 constituted a Committee under the Chairmanship of the Vice Chancellor (VC) of Punjab Agricultural University (PAU) to examine the effects of the said insecticides on human and animal life. He submitted that the power of the State Government to proceed under Section 27 (1) of the Act, was independent of the power of the Central Government under Section 27 (2) of the Act. As far as the Central Government was concerned, it had already banned the import, manufacture or formulation of Triazophos, one of the insecticides mentioned in the table appended to the impugned notification, with effect from 1st January, 2019 and had imposed a complete ban on its use with effect from 31st December, 2020. In relation to two of the nine other insecticides mentioned in the impugned notification, viz., Tricyclazole and Buprofezin, the Central Government had in exercise of its powers under Section 27 (2) of the Act issued a draft order proposing their ban, and had invited objections to the draft. Likewise, another draft order had been issued by the Central Government on 14th May 2020 proposing the ban of 27 insecticides, of which four insecticides viz., Acephate, Carbendazim, Carbofuron and Thiophinate Methyl were included in the impugned notification of the State Government. The said draft orders have been enclosed with the reply filed by the Respondent Nos. 1 and 2. The draft orders, *inter alia*, stated that the Central Government was satisfied that the said insecticides involved risks to the health of human beings and animals.

11. Mr. Arun Nehra, learned counsel for the Petitioners countering the arguments of the State counsel submits that so far as the draft orders are concerned, the Petitioners have filed their objections to them and till date no final order has been passed.
12. The above submissions have been considered. The impugned notification is an interim measure taken by the Government of Punjab within the ambit of Section 27 (1) of the Act which, as rightly pointed out, is independent of the powers of the Central Government under Sections 27 (1) and (2) of the Act. The impugned notification duly records the reasons for its issuance. It states that an opinion was formed that the use of the insecticides mentioned therein involved a risk to human beings and constrained exports since high levels of residue were found in the rice grains, especially in *Basmati*. Various efforts made by the State Government to keep in check the usage of the said insecticides were not fruitful. Further, with a Committee having been constituted by a notification dated 28th August, 2020, for further investigation to examine the effects of these insecticides on human and animal life, the impugned notification complies with the pre-requisites of Section 27 (1) of the Act. It cannot, therefore, be faulted on that score.
13. Further, merely because the report of Punjab Rice Exporters Association was also considered, that by itself would not be a reason to quash the impugned notification. Under Section 27 (1) of the Act, there is no restriction on the source of information. The fact that the Central Government has already banned Triazophos and has issued draft orders proposing a total ban on six other insecticides of the nine mentioned in the impugned notification, is further indicative of the fact that they are likely to pose a risk to human beings and animal life. The objections to the draft orders have been submitted by those impacted, including the Petitioner, and the issue is at an advanced stage of investigation.

14. The contention that the ‘competent authority’ means one fixing the Indian standards for MRL is not well founded. From a plain reading of Section 27 (1), it is evident that the State Government should be of the opinion that use of the insecticides sought to be banned, for a limited period, involves risk to human or animal’s life. There is no mention therein of Indian or European standards of MRL. Moreover, in some cases there could be an occasion where insecticides residue on food grains may not be acceptable at all.
15. It would be a fallacy to accept that the ban on use of insecticides on paddy crop and not other crops, means that these insecticides are not harmful to human beings. The ban is restricted to paddy crop including *basmati* as higher level of insecticides residue were found on the rice grains and not on other food grains. To buttress the contention, Mr. Nehra learned counsel for the Petitioners relied on a part of paragraph 7 of reply filed by the Respondent Nos. 1 and 2 i.e. “That, the safety of these nine insecticides on human health has never been the main basis of issuance of the said notification”, to mean that there is an admission that these insecticides are not harmful to humans. The aforesaid sentence, when read carefully, indicates that this issue has not been the sole basis for the ban. This cannot be construed as an admission that they are not harmful to humans and animals. The effect of these insecticides on other crops is yet to be investigated. The contention that MRL is only a trading standard and not a toxological one overlooks the fact that the rationale behind MRL is intrinsically linked to the aspect of the risk to safety to health of humans and animals posed by the insecticides. Exports of paddy crop including *basmati* from Punjab were adversely impacted since these safety standards in the form of MRL were not being met. It is also important to note in this context that there are alternative insecticides available to farmers growing paddy crop, including *basmati*. It is nobody’s case that the farmers have opposed the ban on the nine insecticides in terms of the impugned notification.

16. The prohibition under Section 27 (1) is an interim one, pending investigation. It is for a limited period. At this stage, there was no occasion for grant of a personal hearing to the stakeholders or to confront them with the material forming the basis of the tentative opinion formed by the Government of Punjab in relation to the nine insecticides and their effect on paddy crop including *basmati*. Thus, the notification cannot, in the circumstances, be said to be arbitrary or unreasonable or contrary to the requirement of Section 27 (1) of the Act. With a Committee headed by the VC of PAU for the purposes of further investigation having been notified, the Petitioners can give their inputs to such Committee. As far as the draft orders issued by the Central Government under Section 27 (2) of the Act are concerned, they *inter alia* record that the insecticides proposed to be banned pose a risk to the health and safety of humans and animals. Admittedly, the Petitioners and others like them have submitted their objections, and these will be considered before issuing any final ban order.
17. Section 9 of the Act states that a person desiring to import or manufacture an insecticide has to apply for registration. As per Section 9 (3), the Committee satisfies itself that the insecticide conforms to the claim made by the applicant as regards its efficacy and its safety for human beings and animals. The mere grant of registration for an insecticide would not preclude the exercise of powers in relation thereto under Section 27 (1) or (2) of the Act, if at a subsequent stage the circumstances so warrant. Section 9 (3) and Section 27 operate in different areas. Further, the wording of Section 27 (1) indicates that the power can be invoked by both the State and the Central Governments. The ban imposable under Section 27 (1) of the Act is by its very nature an interim measure and for a limited period, whereas the scope of the power of the Central Government under Section 27 (2) of the Act is much wider. These provisions are thus not mutually exclusive.
18. The impugned notification issued by the Government of Punjab cannot be faulted merely because other States have not imposed a

similar ban. In case the Central Government bans these insecticides under Section 27 (2) of the Act, the same would be applicable pan-India.

19. Apart from the press release and certain news items, no material has been placed on record to establish that these insecticides were banned earlier. Even otherwise, there is no bar under Section 27 of the Act to issue a fresh notification if the circumstances so warrant. The decision in *Syngenta Crop Protection Pvt. Ltd. (supra)* does not advance the case of the petitioners. There, the first notification under Section 27 (1) lapsed without a final order, pursuant to the investigation, being passed. When another notification was again issued under Section 27 (1) of the Act, the High Court held that it could not be done unless the contingencies mentioned therein had arisen in the interregnum. The factual position here is different.
20. For all the aforementioned reasons, the writ petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

(S. MURALIDHAR)
JUDGE

18th September, 2020
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Whether speaking / reasoned	:	Yes
Whether reportable	:	Yes