

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(I)

CRM-M-46939-2018

Reserved on: 06.12.2023

Date of Decision: 22.12.2023

RAJENDRA MADHAO JOG AND ANR.

-Petitioners

Versus

STATE OF PUNJAB

-Respondent

(II)

CRM-M-43734-2019

AMRITPAL SINGH

-Petitioner

Versus

STATE OF PUNJAB

-Respondent

CORAM: HON’BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. Rakesh Verma, Advocate and
Mr. Manish Verma, Advocate
for the petitioners.

Mr. Karunesh Kaushal, A.A.G, Punjab.

KULDEEP TIWARI, J.

1. Since both these petitions derive their origin from the very complaint, besides the reliefs claimed therein are also identical, therefore, they are amenable for being decided through a common verdict.
2. In the lead petition, i.e. CRM-M-46939-2018, the petitioner No.1 is the Director of the company, namely, M/s Syngenta India Ltd., Pune (hereinafter referred to as the ‘accused company’), and, petitioner No.2 is the Manager (Area Sales) of the accused company.

3.

In the other petition, i.e. CRM-M-43734-2019, the petitioner is

the Ex-Godown Incharge of the accused company.

4. The common reliefs, as craved by the petitioners, in both these petitions, pertain to quashing of the impugned Complaint No.3712 dated 16.03.2018, under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as the 'Act of 1968'), read with Rule 27(5) of the Insecticides Rules, 1971 (hereinafter referred to as the 'Rules of 1971'), titled as "State V/s M/s Syngenta India Ltd. & Others", which is pending adjudication before the learned Chief Judicial Magistrate, Ludhiana. In addition, the petitioners also seek quashing of the summoning order dated 16.03.2018 and all consequential proceedings arising therefrom.

FACTUAL MATRIX

5. The accused company is the registered manufacturer of various kinds of insecticides, fungicides and weedicides. On 10.09.2015, the Notified Insecticide Inspector, Ludhiana, conducted checking at the premises of the accused company, i.e. Godown No.104-105, Guru Gobind Singh Marg, Alamgir, Ludhiana, and, drew a sample of insecticide, namely, Quinalphos 25% EC, bearing Batch No.SPK5B016, Manufacturing date: 05.02.2015, Expiry date: 04.02.2017, Manufactured by: M/s Syngenta India Limited, Baner Road, Pune.

6. The Insecticide Inspector concerned had randomly selected three originally packed and sealed containers, each of 250 ml capacity, of the insecticide, namely, Quinalphos 25% EC, bearing Batch No.SPK5B016, marked with Code PST-20.

7. Thereafter, one sealed test sample of the insecticide (supra) was dispatched, for analysis, to Plant Protection Adviser, Directorate of PPQ&S, Central Coding Cell, RPTL, NH-IV, Faridabad, through the Chief

Agricultural Officer, Ludhiana, vide letter dated 14.09.2015. Then, this sealed test sample portion was got tested from the Incharge, Insecticides Analyst, Regional Pesticides Testing Laboratory, Chandigarh, whose report was received on 26.09.2015.

8. However, upon analysis, the sample showed 28.69% contents of Quinalphos, instead of Quinalphos 25% EC, which rendered the sample to be misbranded, under the provisions of the Act of 1968. Therefore, the Chief Agricultural Officer, Ludhiana, sent the relevant record along with analysis report, on 16.10.2015, to the Deputy Director Agriculture (LC&PP) Punjab, S.A.S. Nagar, being State Licensing Authority, which led the latter to serve show cause notices to the manufacturing accused company and to its responsible functionaries, including the petitioners, vide Office Endst. No.LCPP/ADO-2015/2583-89 dated 21.10.2015. Pursuant to issuance of show cause notices, the accused company furnished its reply on 30.10.2015.

9. However, the Deputy Director, Agriculture (LC&PP), Punjab, again served show cause notice to the accused company and its responsible functionaries, vide Office Endst.No.LCPP/ADO-2016/356-363 dated 10.02.2016, wherein, it was clarified to the latter that since they had not deposited the re-testing fee, hence, it implied that they did not want to avail the facility of getting the sample re-tested.

10. However, finding no reply from the accused company, the Deputy Director, Agriculture (LC&PP), Punjab, S.A.S Nagar, vide Office Letter No.LCPP/ADO-16/716-721 dated 11.03.2016, cancelled the licence of the accused company.

11. Thereafter, the requisite written consent/sanction, as required under Section 31(1) of the Act of 1968, for instituting prosecution against

the accused company and its responsible functionaries, including the petitioner, was sought by the Insecticide Inspector concerned, which was consequently granted by the Joint Director of Agriculture (Plant Protection), Punjab, S.A.S. Nagar, being Competent Notified Authority, vide Office Endst.No.781-83/ADO(PP) dated 06.03.2018.

12. Resultantly, the impugned Complaint was filed against the petitioners and other co-accused, whereupon, the learned trial Court, through drawing the summoning order dated 16.03.2018, summoned the petitioners and other co-accused to face trial.

13. The impugned complaint and the summoning order have caused grievance to the petitioners, who have instituted the instant petitions, thereby seeking redressal of their grievance.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

14. The primary argument of the learned counsel for the petitioners is rested upon the factum that despite the petitioners filing a reply to the first show cause notice on 30.10.2015, i.e. within nine days of its being served upon the petitioners, yet the referral part of the sample was, in compliance of provisions of Section 24 of the Act of 1968, not sent for re-analysis to the Central Insecticide Laboratory, Faridabad, which ought to have been sent within a period of 30 days, from the date of filing of such request by the petitioners in their reply (supra).

15. He rests his second argument on the ground that the shelf life of the sample had expired on 02.04.2017, whereas, the impugned complaint was instituted on 16.03.2018. Therefore, the basic right of the petitioners to get the sample re-analysed, after making appropriate application before the learned trial Court, has been infringed, as the impugned complaint was

evidently filed much after expiry of shelf life of the sample.

16. The third argument, as raised by the learned counsel for the petitioners, pertains to non-compliance of the mandatory provisions, as enshrined in Section 33 of the Act of 1968, which renders the impugned complaint to be unscrupulous and bad in law. He submits that since the petitioners are not concerned with the quality control of the products manufactured by their company, rather a Quality Control Officer has been appointed in their company, for the said purpose, therefore, at the most, only the said Quality Control Officer could be nominated as an accused in the impugned complaint, instead of the petitioners.

17. Finally, the learned counsel for the petitioners places much emphasis on flagrant non-compliance of Section 22(6) of the Act of 1968, to contend that there was delay in sending the sample for analysis. He submits that the sample, which was drawn on 10.09.2015, was sent to the Insecticide Analyst concerned on 15.09.2015, i.e. on the fifth day of its being drawn, whereas, the provisions of Section 22(6) makes it mandatory to forthwith send the sample for analysis, without any delay.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENT

18. Per contra, the learned State counsel, while opposing the grant of asked for reliefs to the petitioners, draws attention of this Court towards the reply, as furnished by the accused company to the first show cause notice, to contend that there was no such request made on the part of the accused company to get the sample re-analysed from the Central Laboratory concerned, therefore, the primary argument of the learned counsel for the petitioners pales into insignificance.

19. He further submits that the pleas, as raised by the petitioners

before this Court, constitute highly disputed questions of facts, which are required to be adjudicated by the learned trial Court, after appreciation of the evidence adduced before it, by both the parties.

20. He further submits that insofar as the argument of the learned counsel for the petitioners, that the petitioners are not concerned with the quality control of the products, is concerned, the same gets belied by the affidavits, as furnished by the petitioners and which are enclosed as Annexure R-5 and R-6 with the reply, inasmuch as, it has been declared therein that Mr. Amritpal Singh (petitioner in CRM-M-43734-2019), Mr. Ajay Pal Rathore (petitioner No.2 in CRM-M-46939-2018) and other co-accused are responsible for quality control under Section 33 of the Act of 1968.

REASONS FOR REJECTING THE ARGUMENTS MADE BY LEARNED COUNSEL FOR THE PETITIONERS

21. Before penning down the reasons for rejecting the prime argument of the learned counsel for the petitioners, inasmuch as, the referral part of the sample being not sent for re-analysis, in compliance of Section 24 of the Act of 1968, it is deemed imperative to first extract Section 24 of the Act of 1968, which is extracted hereinafter:-

“24. Report of Insecticide Analyst.—(1) The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of section 22, shall, within a period of thirty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by an Insecticide

Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the magistrate under sub-section (6) of section 22 to be sent for test or analysis to the said laboratory, [which shall, within a period of thirty days, make the test or analysis] and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Insecticides Laboratory under sub-section (4) shall be paid by the complainant or the accused, as the court shall direct."

22. Sub-section (3) of the hereinabove extracted Section 24 of the Act of 1968 prescribes that the report of Insecticide Analyst shall be considered as evidence of the facts stated therein and such evidence shall be conclusive, unless the aggrieved person, within twenty-eight days of the receipt of a copy of the report, notified in writing the Insecticide Inspector or the court before which any proceedings in respect of the sample are pending, that he intends to adduce evidence in controversion of the report.

23. Moreover, Sub-section (5) of Section 24 of the Act of 1968, stipulates that the cost of a test or analysis made by the Central Insecticides Laboratory under sub-section (4) shall be paid by the complainant or the

accused, as the court shall direct.

24. In the instant case, since the relevant proceedings were pending before the Insecticide Inspector/statutory authority concerned, as no complaint was filed before Court at the relevant time, therefore, had the petitioners been seized of any grievance against the initial analysis report, besides had any intention to get the sample re-analyzed, they ought to have notified such intention to the statutory authority concerned and ought to have deposited the requisite fee for re-testing of sample.

25. Here, in their reply dated 30.10.2015, as furnished to the first show cause notice, though the petitioners did notify their intention to adduce evidence to controvert the analytical report of the Insecticide Analyst, however, they did not deposit the requisite fee for re-testing of the sample and consequently, since the reply was assessed to be unsatisfactory, the statutory authority concerned again served a second show cause notice dated 10.02.2016 to the accused company and its responsible functionaries, wherein, it was specifically recorded that the accused company has not availed the re-testing facility. The relevant extract of the show cause notice (supra) is reproduced hereinafter:-

“As per the provisions 24(3) of the Insecticides Act, 1968, you were entitled for retesting after paying the cost of retesting of misbranded samples of your firm within 28 days of the receipt of report. But you and your firm did not availed retesting facility. (emphasis supplied)

All this action of your proves that you and your firm has manufactured, distributed and stored misbranded insecticides at firm's premises located at Goyal Estate, Near Loddawal Bridge, G.T. Road, Ludhiana and Godown No.104-105, Guru Gobind Singh Marg, Alamgir, Ludhiana by manufacturing, distributing and storing Misbranded Pesticides, you and your firm has violated Sections

3k(1), 17, 18, 33 punishable under Section 29 of the Insecticides Act, 1968. No valid reply was submitted by you and your firm in this office. It means that you and your firm have nothing conclusive to say or explain in this regard and you and your firm have committed violation knowingly under Insecticides Act, 1968 and Rules, 1971.

You and your firm is granted one last opportunity to explain your position along with complete records within one week of issuance of this letter.”

25. However, despite ample opportunity being afforded by the authority concerned in the second show cause notice dated 10.02.2016, the petitioners opted to maintain silence, inasmuch as, they neither made any reply to the show cause notice (supra), nor furnished the requisite fee for availing the facility of re-testing of sample. Resultantly, the Deputy Director (LC&PP)-cum-Licensing Authority, Punjab, cancelled the licence of the accused company, vide Office Letter No.LCPP/ADO-2016/716-721 dated 11.03.2016, wherein, it was again reiterated that despite the petitioners, in terms of Section 24(3) of the Act of 1968, being entitled for re-testing of sample, but only upon furnishing the requisite fee within 28 days of the receipt of the report, yet them not availing the said re-testing facility, constrained the authority concerned to draw an inference that they do not have any explanation in their defence and consequently, formed the bedrock for cancellation of the licence of the accused company. The relevant extract of the cancellation letter is reproduced hereinafter:-

“As per the provisions 24(3) of Insecticides Act, 1968, you were entitled for re-testing after paying the cost of re-testing of misbranded sample of your firm within 28 days of the receipt of report. But you and your firm did not avail re-testing facility. It is very much clear from your action of not applied for re-testing that you and your firm is sure that your sample is not going to pass in re-testing, hence no need to apply for re-testing. You and your firm was

granted one last opportunity by this office letter No.356-363 dated 10.02.2016 to explain your position within one week. But even after 1 month neither you have appeared nor any reply explaining your position is received in this office.

Hence it is clear that you and your firm has distributed and stored misbranded insecticides at your firm's premises located at godown premises Godown No.104-105, Guru Gobind Singh Marg, Alamgir, Ludhiana (Punjab) by manufacturing/marketing and storing misbranded pesticides you and your firm has violated 3k(1), 17, 18, 29 & 33 of the Insecticides Act, 1968 and Rules 19(2) of the Insecticides Rules, 1971. No valid reply was submitted by you and your firm in this office. It means that you and your firm have nothing conclusive to say or explain in this regard and you and your firm have committed violation knowingly under Insecticides Act, 1968 and Rules, 1971.”

26. It would be worth to record here that the petitioners have made material concealment from this Court, inasmuch as, they have not made any whisper before this Court, either about issuance of the second show cause notice dated 10.02.2016, or, about cancellation of the licence of the accused company. These concealed facts have surfaced in the reply furnished by the learned State counsel. Therefore, such material concealment estop the petitioners to, now before this Court, assail the unambiguous and categoric observations, as recorded in the second show cause notice (supra), besides in the cancellation letter (supra), inasmuch as, non-availment by the petitioners of the facility for re-analysis of the sample, owing to non-deposit of the requisite fee. Nonetheless, the record available before this Court also does not carry anything even remotely indicative of the fact that the observations (supra) have ever been assailed by the petitioners. Therefore, in such circumstances, this Court is impelled to draw an inference that the observations (supra) have attained a binding and conclusive effect. The

upshot of the observations (supra) attaining conclusivity, besides the indolent approach of the petitioners, is sufficient for this Court to conclude, at this stage, that the petitioners did not have any intention to get the sample re-tested by depositing the requisite statutory fee. Consequently, the prime argument of the learned counsel for the petitioners that their request for re-analysis of the sample was not adhered to, pales into insignificance, as the same appears to be flimsily made, rather is promoted by an ill stratagem to create an artificial legal lacuna, for thereby achieving the desired reliefs.

27. Now, advertent to the second argument of the learned counsel for the petitioners, which is rooted in the shelf life of the sample becoming expired much prior to the institution of the impugned complaint, this Court does not find any vigour or substance in this argument.

28. The reason for rejecting the above made argument spurs from the factum that, this argument could have well been raised only if the authority concerned had not, in compliance of the provisions of Section 24(3) of the Act of 1968, afforded any opportunity to the petitioners to get the sample re-analyzed/re-tested after depositing the requisite fee. Nonetheless, this argument could also be conceived to have acquired caliber, in case the authority concerned had, immediately after receipt of the initial test report dated 26.09.2015, straightway filed the impugned complaint, without providing any opportunity to the petitioners to make any explanation or reply, as in such circumstances, the shelf life of the sample would have gained significance. However, as elaborated hereinabove, the authority concerned had, in terms of Section 24(3) of the Act of 1968, afforded ample opportunities to the petitioners to avail the facility for re-analysis/re-testing of the sample by furnishing the requisite fee, however,

the petitioners evidently did not avail the said facility.

29. Consequently, at this initial stage, the petitioners cannot agitate before this Court that filing of the impugned complaint belatedly to the expiry of the shelf life of the sample has caused any prejudice to them, especially when they themselves had abandoned their statutory right to get the sample re-analyzed/re-tested, despite grant of ample opportunities by the competent authority concerned, in terms of Section 24(3) of the Act of 1968.

30. Before commencing to assign reasons for rejecting the third argument of the learned counsel for the petitioners, whose backbone is formed by non-compliance of the mandatory provisions, as enclosed in Section 33 of the Act of 1968, it is deemed imperative to take a glimpse of such provisions, which are reproduced hereinafter:-

“33. Offences by companies.—(1) Whenever an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, or was responsible to the company for the conduct of the business of, the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section:—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

31. The learned counsel for the petitioners has placed heavy reliance upon Sub-section (1) of Section 33 of the Act of 1968, and, upon Annexure P-3 (in CRM-M-46939-2018), which is an affidavit sworn by one Mahesh Parshuram Sonawane, wherein, he assumed responsibility for non-compliance of quality control norms, to build an argument that since the petitioners are the Director, Manager (Area Sales) and Ex-Godown Incharge respectively of the accused company, therefore, they do not have any concern with the quality control of the products manufactured by the accused company and as such, their prosecution, under the impugned complaint, is totally bad in law, whereas, the one who could be prosecuted is said Mahesh Parshuram Sonawane, as he was indisputably the nominated person in charge and responsible for quality control.

32. To substantiate his above made argument, the learned counsel for the petitioners has placed reliance upon the judgment rendered by a Co-ordinate Bench of this Court, in **CRM-M-54573-2019**, titled as “**Amarjit Singh and another V/s State of Punjab**”, wherein, it has been held that once a company has appointed a responsible officer for quality control, thereupon, the other functionaries of the said company cannot be prosecuted for violation of quality control norms.

33. Reliance is also placed upon the judgment rendered by the Hon’ble Supreme Court in “**M/s. Cheminova India Ltd. & Anr. V/s State of Punjab & Anr.**”, 2021(3) R.C.R. (Criminal) 750, wherein, it has been held that if there exists a particular officer responsible for quality control of

a company, then there is no reason or justification for prosecuting the Managing Director of the said company.

34. This Court has examined both the judgments cited hereinabove by the learned counsel for the petitioners, however, the same does not apply to the facts and circumstances of the present case. The reason for forming this inference stems from the factum that, though one Mahesh Parshuram Sonawane, through drawing Annexure P-3, had assumed responsibility for all acts and omissions/non-compliance of quality control, however, there are also available on record the affidavits, as sworn respectively by the petitioners (in CRM-M-46939-2018), wherein, it has been declared with solemnity that Amritpal Singh Godown Incharge (sole petitioner in CRM-M-43734-2019) and Ajay Pal Rathore (petitioner No.2 in CRM-M-46939-2018) are responsible for conduct of business of the accused company, as per scope and spirit of Section 33 of the Act of 1968. The relevant extracts of affidavits, as sworn respectively by the petitioners (in CRM-M-46939-2018) are reproduced hereinafter:-

“I, Rajendra Madhao Jog S/o Madhao Jog, Address: Sr.167/1, Flat C-16, Aundh, Near Bridge, Pune-411007, Maharashtra, Whole Time Director of M/s Syngenta India Ltd. (CIN: U2410N2000PLC135336) having its Registered Office at Amar Paradigm, S-110/11/3, Baner Road, Pune 411045 (hereinafter known as the 'Company') do hereby solemnly affirm and declare as under:-

- 1. That the company is manufacturing and marketing insecticides/pesticides and Seeds.*
- 2. That I hereby undertake that in case Mr.Amritpal Singh Godown Incharge, Mr.Ajay Pal Rathore person responsible for conduct of business, Ms.Asha Machado and Mr.Mahesh Parshuram Sonawane, persons responsible for quality control under Section 33 of the Insecticides Act, 1968 and Rules made there under, leaves / retires / left the company, I shall nominate and authorize*

alternate person(s) in place of the above, for the purpose of serving the warrants / summons if any, from any Court of law and see that said person(s) attends the court on the due dates, failing which our principal certificate is liable for cancellation in the State of Punjab”.

“I, Ajay Pal Rathore S/o Man Singh Rathore R/o 1045, Phase-9, Mohali, Punjab do hereby solemnly affirm and declare as under:

- 1. That I am working as Zonal Sales Manager of M/s Syngenta India Ltd.*
- 2. That the said firm is manufacturing pesticides / insecticides / weedicides / fungicides.*
- 3. That I am responsible person for Punjab for the conduct of business of the said firm as per scope and spirit of the Section 33 of the Insecticides Act, 1968 and I shall be responsible for all the acts and omission of M/s Syngenta India Ltd. pertaining to marketing of pesticides by the said firm.”*

35. In such circumstances, at this initial stage, this Court cannot, without giving any opportunity to the complainant to establish its case by leading evidence, outrightly conclude that the petitioners are covered within the ambit of Section 33 of the Act of 1968, especially when the impugned complaint carries specific allegations against each and every accused. Moreover, since the proviso attached to Section 33(1) of the Act of 1968 bestows shelter to accused to prove, during trial, that the offence was committed without his knowledge, or, that he exercised all due diligence to prevent the commission of such offence, therefore, at this preliminary stage, this Court refrains from adjudicating this issue, which is otherwise amenable for being adjudicated during trial, through adduction of cogent evidence by both the parties.

36. At last, the learned counsel for the petitioners has referred to Section 22(6) of the Act of 1968, to contend that there was considerable delay in sending the sample for analysis, which has caused prejudice to the

petitioners. He has argued that despite Section 22(6) of the Act of 1968 imposing a statutory obligation upon the Insecticide Inspector to “forthwith” send the sample to the Insecticide Analyst for test or analysis, yet the sample was sent after a delay of 5 days, which renders the impugned complaint to be not maintainable.

37. In support of this contention, he has placed reliance upon the judgment rendered by a Co-ordinate Bench of this Court, in ***CRM-M-12926-2018***, titled as “*Sohan Singh V/s State of Punjab*”, wherein, the delay of 6 days in sending the sample was held to be fatal, as the mandatory requirement of Section 22(6) of the Act of 1968, was not complied with.

38. This Court has made scrutiny of the judgment (supra). Though delay of 6 days has been considered to be fatal therein, however, delay in each case has to be assessed based upon the facts and circumstances of such case.

39. The record makes revelations that the sample, in the instant case, was collected on 10.09.2015 and it was sent to laboratory for analysis on 14.09.2015, therefore, the delay, if any, was of 4 days. Moreover, the learned State counsel has denied the allegations qua delay, on the ground, that apart from collecting sample from the accused company on 10.09.2015, samples were also collected from godowns of various other companies on 11.09.2015, which were collectively sent to laboratory on 14.09.2015, as 12.09.2015 and 13.09.2015 were holidays, being Saturday and Sunday. He further submits that since the shelf life of the sample was upto 02.04.2017, therefore, sending the sample within 4 days of its collection cannot be construed to, in any manner, constitute any delay, nor can it be construed to prejudice the rights of the petitioner, as reiteratedly, the petitioners were

given ample opportunities, through serving them two show cause notices prior to expiry of shelf life of the sample, to avail re-testing facility by depositing the requisite fee, which they did not avail.

40. Moreover, the word “forthwith” as comprised in Section 22(6) of the Act of 1968 though imposes a statutory obligation upon the authority concerned to send the sealed sample immediately for analysis, however, mere delay of 4 days, that too validly explained, cannot be construed to prejudice any right of the petitioners, especially when the testing laboratory concerned had found the sample fit for analysis, nor can such delay be proved to be fatal, for thereby granting the asked for reliefs to the petitioners. Therefore, the last argument of the learned counsel for the petitioners is also rejected, being unmeritworthy.

FINAL ORDER

41. For all the reasons (supra), this Court does not find any merit in the instant petitions and the same are accordingly **dismissed**.

(KULDEEP TIWARI)
JUDGE

22.12.2023
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No