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

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CRM-M-34527-2023

Date of decision : 25.07.2023

Anil Tyagi and another**..... Petitioners****versus****State of Haryana and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Harish Mehla, Advocate
for the petitioners.

PANKAJ JAIN, J. (Oral)

Present petition is directed against complaint tiled as '***State of Haryana vs. Anil Tyagi***' bearing No.COMA/774/2021 dated 07.09.2021 and the summoning order dated 07.09.2021 (P-4).

2. Petitioner No.1 is a qualified Chemist. Petitioner No.2 claims himself to be manufacturer of the insecticides under licence. The Deputy Director, Agriculture drew samples from the plant of the petitioner on 24.05.2021 for pesticide Pretilacholor 50% EC, Batch No.RZ42, Mfg. Date May 2021, Expiry Date April 2023. The sample was sent to the quality control lab which found that the same was misbranded. On the basis of the said report, present complaint has been filed against the petitioners leading to their summoning to face prosecution under the provisions of Section 29 of the Insecticides Act, 1968.

3. Counsel for the petitioners submits that from the scheme of the Act, it is evident that the manufacture and sale have been dealt

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differently. Section 3(j) defines ‘manufacture’ and Section 3(p) defines ‘sale’. Likewise Section 17 and 18 of the Act specify different kind of the Prohibitions for manufacture and sale etc., of the insecticides. Counsel further submits that Section 20 of the Act empower State Government to appoint persons in such numbers as it thinks fit and possessing such technical and other qualifications as may be prescribed to be Insecticide Inspectors for such areas as may be specified in the notification.

4. Further reference has been made to Rule 27 and 28 of the 1971 Rules framed under the Act to submit that Rule 28 deals with duties of Inspectors specially authorized to inspect manufacture of insecticides. In the absence of any notification specially authorizing him under Rule 28, DDA on the strength of notification dated 26.06.2015 was not authorized to draw samples from the premises of the petitioners.

5. Reliance has been placed upon law laid down by Apex Court in ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and others (2018) 9 Supreme Court Cases 1***, wherein it has been observed by the Apex Court that in construing penal statutes, the Court has to apply strict rule of interpretation.

6. On the basis thereof, counsel for the petitioners submits that the Act has to be construed strictly and a person not authorized, cannot be said to have validly drawn samples.

7. I have heard counsel for the petitioners and have gone through the records of the case.

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8. Relevant provisions that need to be culled out for proper adjudication of the present case read as under:-

20. Insecticide Inspectors.—(1) The Central Government or a State Government may, by notification in the Official Gazette, appoint persons in such number as it thinks fit and possessing such technical and other qualifications as may be prescribed to be Insecticide Inspectors for such areas as may be specified in the notification:

Provided that any person who does not possess the required qualifications may be so appointed only for the purposes of clause (a) and clause (d) of sub-section (1) of section 21:

Provided further that no person who has any financial interest in the manufacture, import or sale of any insecticide shall be so appointed.

(2) Every Insecticide Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860), and shall be officially subordinate to such authority as the Government appointing him may specify in this behalf.

21. Powers of Insecticide Inspectors.—(1) An Insecticide Inspector shall have power—

- (a) to enter and search, at all reasonable times and with such assistance, if any, as he considers necessary, any premises in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed, or for the purpose of satisfying himself that the provisions of this Act or the rules made thereunder or the conditions of any certificate of registration or licence issued thereunder are being complied with;

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- (b) to require the production of, and to inspect, examine and make copies of, or take extracts from, registers, records or other documents kept by a manufacturer, distributor, carrier, dealer or any other person in pursuance of the provisions of this Act or the rules made thereunder and seize the same, if he has reason to believe that all or any of them, may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder;
- (c) to make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act or the rules made thereunder are being complied with and for that purpose stop any vehicle;
- (d) to stop the distribution, sale or use of an insecticide which he has reason to believe is being distributed, sold or used in contravention of the provisions of this Act or the rules made thereunder, for a specified period not exceeding ¹[thirty] days, or unless the alleged contravention is such that the defect may be removed by the possessor of the insecticide, seize the stock of such insecticide;
- (e) to take samples of any insecticide and send such samples for analysis to the Insecticide Analyst for test in the prescribed manner; and
- (f) to exercise such other powers as may be necessary for carrying out the purposes of this Act or the rules made thereunder.

²[(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, as far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant

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issued under section 94 of the said Code.]

(3) An Insecticide Inspector may exercise the powers of a police officer under ³[section 42 of the Code of Criminal Procedure, 1973 (2 of 1974)], for the purpose of ascertaining the true name and residence of the person from whom a sample is taken or an insecticide is seized.

Rule 26. Qualifications of Insecticide Inspector—A person shall be eligible for appointment as an Insecticide Inspector under the Act only if he possesses the following qualifications, namely:—

- (a) graduate in Agriculture, or graduate in Science with Chemistry as one of the subjects;
- (b) adequate field experience.

Rule 27. Duties of Insecticides Inspector—The Insecticides Inspector shall have the following duties, namely:—

- (1) to inspect not less than three times in a year all establishments selling insecticides within the area of his jurisdiction;
- (2) to satisfy himself that the conditions of licence are being complied with;
- (3) to procure and send for test and analysis, samples of insecticides which he has reason to suspect are being sold, stocked or accepted for sale in contravention of the provisions of the Act or rules made there under;
- (4) to investigate any complaint in writing which may be made to him;
- (5) to institute prosecution in respect of breaches of the Act and the rules made there under;
- (6) to maintain a record of all inspections made and action taken by him in the performance of his duties including the taking of samples and seizure of stocks and to submit copies of such record to the licensing officer;
- (7) to make such inquiries and inspections as may be necessary to detect the sale and use of insecticides in

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contravention of the Act.]

Rule 28. Duties of Inspectors specially authorized to inspect manufacture of Insecticides—It shall be the duty of any Inspector authorized to inspect the manufacture of Insecticides—

(1) to inspect not less than twice a year all premises licensed for the manufacture of insecticides within the area of his jurisdiction and to satisfy himself that the conditions of the licence and the provisions of the Act or the rule made there under are being observed;

(2) to send forthwith to the licensing officer after each inspection, a detailed report indicating the conditions of the licence and the provisions of the Act or rules made thereunder which are being observed and the conditions and provisions, if any, which are not being observed;

(3) to draw samples of insecticides manufactured on the premises and send them for test or analysis in accordance with these rules;

(4) to report to the government all occurrences of poisoning.

9. Apart from the aforesaid provisions, the two notifications which would fall for the consideration placed on record as Annexures P-7 and P-8 read as under:-

“[Extract from Haryana Government Gazette (Extra), dated the 27th June, 2013]

HARYANA GOVERNMENT

AGRICULTURE DEPARTMENT

NOTIFICATION

The 27th June, 2013

No.1243-Agri, 11(1)-2013/9679. In exercise of the powers conferred by Sub section (1) of Section 20 of Insecticide Act, 1968 (Act 46 of 1968) in supersession of the Notification No. 1742-Agri 1(1)-2007/1188 dated 24th October, 2007 the Governor of Haryana hereby appoints the following offices as mentioned under Column

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2 of the Schedule given below who possess the qualifications as mentioned under rule 26 of the Insecticides Rules 1971, within the limits of local area of jurisdiction specified against each under column 3 of the said Schedule, to be Insecticide Inspectors specially authorized in Inspect manufacture of insecticides for the purpose of rule 28 of the Insecticides Rules, 1971.

SCHEDULE

Sr. No.	Designation of the Officer	Limits of Local area of jurisdiction
1	2	3
1.	Additional Director of Agriculture (Extension), Haryana, Panchkula.	Whole of Haryana State
2.	Additional Director of Agriculture (General), Haryana, Panchkula.	Whole of Haryana State
3.	Additional Cane Commissioner, Haryana, Panchkula.	Whole of Haryana State
4.	Joint Director of Agriculture (Quality Control), Haryana, Panchkula.	Whole of Haryana State
5.	Joint Director of Agriculture (Plant Protection), Haryana, Panchkula.	Whole of Haryana State
6.	Joint Director of Agriculture (Cash Crop), Haryana, Panchkula.	Whole of Haryana State
7.	Deputy Director of Agriculture (HRD), Haryana, Panchkula.	Whole of Haryana State
8.	Deputy Director of Agriculture (Plant Protection).	Whole of Haryana State
9.	All Deputy Directors of Agriculture in the State of Haryana.	Within Their respective district(s)
10.	All Quality Control Inspector in the State of Haryana.	Within Their respective district(s)

ROSHAN LAL,

Principal Secretary to Government Haryana,
Agriculture Department.

HARYANA GOVERNMENT
AGRICULTURE DEPARTMENT
NOTIFICATION

Dated, Chandigarh the :- 26th June, 2015

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No.1159-Agri-11 (1) 2015/12364. In exercise of the powers confirmed by Sub-Section (1) of section 20 of the Insecticide Act, 1968 (Act 46 of 1968) and all other powers enabling him in this behalf and in supersession of the Haryana Government, Agriculture Department Notification No. 1243-Agri II (1)-2013/9680 dated the 27.06.2013 the Governor of Haryana hereby appoints the following officers as mentioned under column 2 of the Schedule given below, including such officers of the department who are assigned' additional charges of the said posts and who possess the qualifications as mentioned under Rule-26 of the Insecticide Rules, 1971 within the limits of local area of Jurisdiction specified against each under Column 3 of the said schedule, to be Insecticide Inspectors for the purpose of said Act, namely:

SCHEDULE

Sr. No.	Designation of the Officer	Limits of Local area of jurisdiction
1	2	3
1.	Additional Director of Agriculture (Extension), Haryana, Panchkula.	Whole of Haryana State
2.	Additional Director of Agriculture (General), Haryana, Panchkula.	Whole of Haryana State
3.	Additional Cane Commissioner, Haryana, Panchkula.	Whole of Haryana State
4.	Joint Director of Agriculture (Quality Control), Haryana, Panchkula.	Whole of Haryana State
5.	Joint Director of Agriculture (Plant Protection), Haryana, Panchkula.	Whole of Haryana State
6.	Joint Director of Agriculture (Cash Crop), Haryana, Panchkula.	Whole of Haryana State
7.	Deputy Director of Agriculture (Human Resources Development), Haryana, Panchkula.	Whole of Haryana State
8.	Joint Director of Agriculture (Cotton), Sirsa.	Whole of Haryana State
9.	Deputy Director of Agriculture (Training), Haryana, Panchkula.	Whole of Haryana State
10.	Deputy Director of Agriculture (Head Quarter), Haryana, Panchkula.	Whole of Haryana State
11.	Deputy Director of Agriculture (Plant Protection), Haryana, Panchkula.	Whole of Haryana State
12.	Deputy Director of Agriculture (Agro), Haryana, Panchkula.	Whole of Haryana State

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13.	Marketing Officer, Haryana, Panchkula.	Whole of Haryana State
14.	Deputy Cane Commissioner, Haryana, Panchkula.	Whole of Haryana State
15.	All Deputy Directors of Agriculture in the State of Haryana.	Within Their respective jurisdiction
16.	All Quality Control Inspector in the State of Haryana.	Within Their respective jurisdiction
17.	All Sub-Divisional Agriculture Officers in the State.	Within Their respective jurisdiction
18.	All Assistant Plant Protection Officers in the State	Within Their respective jurisdiction

10. In the considered opinion of this Court, the argument raised by the counsel for the petitioner is misconceived and result of misreading of the statute. Section 20 deals with Insecticide Inspectors, the powers of Insecticide Inspectors have been specified and laid down in Section 21. Rules have been framed in exercise of the powers conferred by Section 36 of Insecticides Act, 1968. Rule 26 deals with qualification of Insecticides Inspector. Rule 27 provides for duties of Insecticide Inspector and Rule 28 provides for duties of Inspectors specially authorised to inspect manufacturer of insecticides.

11. State by way of notification dated 27.06.2013 notified the Insecticides Inspectors to inspect the manufactures of insecticides for the purpose of Rule 28 of the Insecticides Rules 1971. Meaning thereby, that the Inspectors as notified in the notification dated 27.06.2013 had duties in terms of Rule 28. In super-session of the notification dated 27.06.2013, notification dated 26.06.2015 was issued in exercise of the powers conferred by Section 20 of the Insecticides Act, 1968 appointing the officers as Insecticides Inspectors for the purpose of the Act. The notification further provides that the designated officers possess the qualifications as mentioned under Rule 26 of the

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Insecticides Rules, 1971. Scheme of the Act as well as the rules provide for powers of the Insecticide Inspectors i.e. Section 21 and duties of the Inspectors i.e. under Rule 27 and 28. Section 20 empowers the Central Government or a State Government to appoint persons in such numbers as it things fit to be Insecticide Inspectors for the areas as may be specified in the notification provided they possess such technical and other qualification as may be prescribed, that means the qualification as prescribed under Rule 26. Thus, by way of notification dated 26.06.2015 issued by the State Government, Deputy Director stands appointed as Insecticide Inspector and will have all powers as prescribed under Section 21 which includes power to take samples of any insecticides and send such samples for analysis to the insecticide analyst. Two words used i.e. 'power' and 'duty' are different in their import. 'Power' as contemplated under Section 21 connotes authorization, 'duty' as provided under Rules 27 and 28 connotes obligations. Statute authorises Insecticide Inspector with certain powers as enumerated under Section 21, whereas the Rules 27 and 28 saddle them with certain obligations. The authority to take sample is relatable and falls within the preview of power as contemplated under Section 21. The notification dated 26.06.2015 further notices that the persons appointed are qualified in terms of Rule 26, thus all powers as contemplated under Section 21 stand vested in the persons appointed as Insecticide Inspectors by way of said notification.

12. In view of above, the argument raised by counsel for the petitioner sans merit and is hereby rejected. Consequently, this Court does not find any merit in the present case and the same is ordered to be

dismissed.

(PANKAJ JAIN)
JUDGE

25.07.2023

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Whether speaking/reasoned : Yes

Whether Reportable : Yes