



W.P(MD)No.13298 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13298 of 2024

and

W.M.P.(MD)No.11766 of 2024

1. M/s.Shobikaa Impex Private Limited,
Represented by its Authorized Representative,
34, Sannathi Street,Vennaiimalai Post,
Karur - 639 006.

2.M.Sivasamy,
Shareholder / Director of M/s. Shobikaa
Impex Private Limited,
34, Sannathi Street, Vennaiimalai Post,
Karur - 639 006.

... Petitioners

Vs.

1.The Registration Committee,
Through Secretary,
Central Insecticide Board and Registration Committee,
Department of Agriculture,
Directorate of Plant Protection Quarantine & Storage,
NH-IV, CGO Complex, Faridabad – 121 001.

2.Union of India,
Represented by the Ministry of Agriculture
and Farmers Welfare,
Department of Agriculture and Cooperation,
Krishi Bhawan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondent No.1 to provide the petitioners (1) the communication dated 25.11.2023, and (2) complete copy of the Minutes of the Meeting held on 27 October 2023 at ICMR Hqrs, New Delhi, at least two (2) weeks in advance of scheduling a hearing for the petitioners, in respect of the petitioners registration of Deltamethrin 55 mg/m² (impregnated bed net).

For Petitioners : Mr.Srinath Sridevan, Senior Counsel,
For Mr.Raguvaran Gopalan.

For Respondents : Mr.AR.L.Sundaresan,
Addl. Solicitor General of India,
Assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India.

ORDER

Heard the learned senior counsel for the writ petitioners and the learned Additional Solicitor General of India assisted by the learned Deputy Solicitor General of India for the respondents.

2.The first petitioner is a company engaged in the business of long lasting insecticidal mosquito net (LLIN). On 05.12.2023, the registration committee in its 452nd meeting minuted as follows:-



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11.1	<i>Complaint on the issues of the registration of LLIN under FIM vs FIT of 9(3) Insecticide Act, 1968</i> <i>The Chairman, Registration Committee appraised the RC about the communication dated 25.11.2023 based on the report of the discussion meeting on the LLIN Trial Reports and its verification received from Indian Council of Medical Research (ICMR), New Delhi and also the representation received from HIL India Limited. The communication is regarding issues in the grant of registration of LLIN under FIM vs FIT guidelines to M/s Shobika Impex Pvt. Ltd. The report of the said meeting, duly approved by the DG, ICMR, indicated certain inadvertent anomaly in the scrutiny of the application under the FIM vs FIT category with deviation from the ICMR guidelines for the public health vector control products. RC looking into the gravity of the matter further decided that till the contents of the report are examined and placed before its next meeting the CR issued to M/s Shobika Impex Pvt. Ltd, shall be considered to be on hold and shall not be given effect to. The RC directs the Secretariat of CIB&RC to examine the contents of the report and the communication and place the details of the findings in the agenda of the next meeting positively to take an appropriate view.</i>
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Challenging the same, the petitioner filed W.P.(MD)No.744 of 2024. The writ petition was disposed of by a learned Judge of this Court vide order dated 01.02.2024 in the following terms:-

“2. The case of the petitioners is that the second petitioner is the shareholder and Managing Director of M/s. Shobikaa Impex



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Private Limited. It is reputed export oriented Company in the business of manufacturing of Long-lasting Insecticidal Mosquito Net (hereinafter referred to as LLIN) under the brand names Dura Net, Dura Net Plus and Green Net. The second petitioner is an industry leader in the manufacture of LLINs with a strategic investment in manufacturing LLINs providing employment to about 5000 workers directly and indirectly. The Dura Net and Dura Net Plus products of the petitioners are purchased by global NGOs such as the Global Fund, UNICEF, USAID, UNHCR, Against Malaria Foundation etc., in their efforts to control malaria in the developing countries where malaria related death and illness is high. He had to obtain prior permission from the Central Insecticides Board, the second respondent herein, before introducing, manufacturing and selling a new insecticide product in India. Section 9 of the Insecticides Act, 1968 and Insecticides Rules, 1971 provides for the rules and procedure for registration of the Insecticides. The Registration Committee of the Central Insecticides Board had formulated guidelines in its 315th Meeting dated 22.02.2011, for the approval of imported or indigenously manufactured pesticide in India for use in production of LLIN. The Deltamethrin (previously known as Decamethrin) is one of the insecticides listed as approved by the Department of Plant Protection, Quarantine and Storage. Deltamethrin 55 mg/m² (impregnated bed net) already stands approved as a formulation for import into India, as early as in 2010.

3. It is the further case of the petitioners that on 28.09.2020, he has submitted an application for obtaining Certificate of Registration for indigenous manufacture of LLINs impregnated with Deltamethrin 55mg/m² (impregnated bed net) through online mode, to the second



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respondent Central Insecticides Board. Based on an initial scrutiny, the application was resubmitted on 08.10.2020. This resubmitted application was again scrutinised and accepted via. Serial No.148864. On 15.06.2021, he submitted clarifications regarding deficiency in the label, leaflet, FI registration and toxicity. On 06.12.2021, he also addressed the deficiency raised towards the bio-efficacy of the proposed insecticide. On 17.05.2022, he submitted samples and Reference Standard Material in sealed condition to Central Insecticides Laboratory for analysis, as per the normal procedure. He had submitted replies to the deficiency report raised and filed Form-I with detailed chemical composition, process of manufacture and details of the raw materials via online application process on 22.12.2022. The application was approved during 444th Registration Committee Meeting held on 16.01.2023. Consequently, the ministerial act of issuing the certificate was also completed and he obtained the Certificate of Registration for Deltamethrin impregnated bed net 55 mg/m². Pursuant to the same, he made a representation to the Tamil Nadu State Licensing Authority on 18.09.2023, for including this newly approved product as one additional product in its manufacturing license 589/2022, dated 23.11.2022. This was approved and the State Licensing Authority included the Deltamethrin based LLIN as an additional item in the manufacturing license granted to him and the same was communicated to him through letter dated 17.10.2023. He had already invested more than Rs.300 crores to this project. But shockingly, the agenda for 452nd Registration Committee Meeting held on 05.12.2023 in Agenda Item 11.1 included an alleged complaint on issue of registration of LLIN to him. He was not aware of the same and no copy of such complaint was served on him. Subsequently, the agenda of the meeting notes refers to a



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communication dated 25.11.2023 on LLIN trial reports and its verification from Indian Council of Medical Research (ICMR) and alleges certain inadvertent anomaly in the scrutiny of the petitioners application. Based on the reports, Registration Committee appears to have passed an order to put his Certificate of Registration on hold and given effect to until the reports are examined. The second respondent had unilaterally decided to hold the Registration Certificate to be put on hold without seeking any explanation from the petitioners. Challenging the same, the present writ petition has been filed.

4. The respondents 1 and 2 filed a counter stating that the present writ petition has been filed challenging the decision of the second respondent (Registration Committee) taken in its 452nd Meeting at Agenda Item No.11.1, wherein the approval granted to the petitioners to manufacture deltamethrin impregnated bed net 55 mg per meter square has been put on hold. In this regard, it is stated that against the impugned decision there exists an efficacious and statutory remedy of filing an appeal under Section 10 of the Insecticides Act, 1968 and / or a revision under Section 11 of the Insecticides Act, 1968, before the Central Government. Therefore, the present writ petition is not maintainable. Further, the issue in question was further placed before the Registration Committee in its 453rd Meeting at Agenda Item No.10.9 held on 16.01.2024, wherein the RC decided as under:

“Follow up action on agenda item No.11.1 complaint on the issues of the registration of LLIN under FIM vs FIT u/s 9(3)

RC perused the agenda in detail and observed that in terms of its decision in its 444th (vide agenda item no.6.13) held on 16.01.2023 and 452nd RC meeting (vide agenda item no.11.1) held on 05.12.2023, the matter was looked into by the Secretariat of CIB & RC. RC further observed that as indicated in the report of the Committee constituted under ICMR, there is



an apparent non-adherence to ICMR guidelines for data generation of Long Lasting Insecticidal Net (LLIN) which may have an impact on human health and safety and which ought to have been followed to by M/s. Shobika Impex Pvt. Ltd., RC is of the view that the matter needs detailed scientific and technical examination and deliberations. RC is of the further view that before taking a final decision, an opportunity may be granted to M/s. Shobika Impex Pvt. Ltd. for presenting their case, in this instant matter. RC accordingly directs the Secretariat of CIB & RC to provide the requisite material that formed the basis of its 452nd meeting decision and invite M/s.Shobika Impex Ltd for a presentation in this regard in the upcoming RC meeting.”

5. According to the respondents, the petitioners will be heard before arriving at a final decision in this matter and they have not passed any final orders and till the final decision is taken, they would abide by the order being passed by this Court.

6. The learned counsel appearing for the petitioners would submit that they are challenging the jurisdiction of the Registration Committee on the ground that there is no provision to cancel or review the said decision taken by the authority concerned and the interim order may be continued till the decision is taken.

7. On going through the averments made in the affidavit as well the counter, it is clear that the petitioners were given permission to manufacture deltamethrin impregnated bet net 55 mg per meter square and now the registration has been put on hold by the authorities without hearing the parties, based on the complaint. When the papers are not served on the petitioners, they were shocked to see the impugned order, wherein the approval granted to the petitioners has been put on hold. The authorities can do so only after hearing the parties and without hearing the petitioners, they could not pass the



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said impugned order. Hence, the interim order passed by this Court earlier to continue and the petitioners will be given an opportunity of hearing before they are going to take a final decision. The petitioners are at liberty to raise all the legal grounds available to them and if the final order is adverse to the petitioners interest, they can challenge the same. Accordingly, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.”

3.Pursuant to the direction given by this Court, the respondents vide email communication dated 14.02.2024 made available certain documents. The petitioner was called upon to be present physically in the meeting to be held on 22.02.2024. The petitioner did not appear for enquiry. Instead, the petitioner submitted representation dated 16.02.2024 seeking adjournment of the meeting. In the meanwhile, they also sent an RTI application dated 19.02.2024 seeking certain documents. The information sought for by the petitioner had not been furnished and it appears to be pending at the stage of second appeal before the commission. Yet another request was made on 15.04.2024 seeking copy of the following documents:-

“In view of the above, my client humbly prays that the:

- (i) RC conducts further proceedings in the captioned matter after the refusal of the representative(s) from the Ministry of Chemical and Fertilizers,*
- (ii) RC provides a full and complete copy of the communication dated 25.11.2023;*



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(iii) RC provides a full and complete copy of the "Minutes of the Meeting to discuss LLIN Trial report related to M/s Shobika Impex Pvt. Ltd held on 27 October 2023 at ICMR Hqrs, New Delhi";

(iv) RC schedules a preliminary hearing on the preliminary issue of jurisdiction of the RC to conduct the proceedings.”

Instead of responding to the aforesaid request, the petitioner was once again called upon to be present for enquiry in the meeting to be held on 19.04.2024. Since 19.04.2024 happened to be the voting day in the State of Tamil Nadu, the petitioner made a request for adjournment of the meeting. The meeting was accordingly adjourned. Since the petitioner's request made on 15.04.2024 had not been complied with, the present writ petition came to be filed for being furnished with the petition mentioned documents.

4.During the pendency of the writ petition, the petitioner was called up to be present for enquiry on 26.06.2024. Citing the pendency of the writ petition, the petitioner avoided attending the meeting on the said date.

5.The learned Additional Solicitor General of India clarifies that no ex-parte decision has been taken as on date and that the issue is kept open.

6.The only question that calls for consideration is whether the petitioners can insist that they should be furnished with the petition mentioned documents



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before they can be called upon to participate in the enquiry. The learned senior counsel for the writ petitioners took me through the contents of the minutes dated 05.12.2023 as well as 16.01.2024 and contended that he is only asking for the relied-upon documents. He pointed out that it is an elementary principle of administrative law that the noticee is entitled to be furnished with the relied-upon up documents. That alone would sub-serve the principle of natural justice. The learned senior counsel drew my attention to the decision of the Hon'ble Supreme Court reported in **(1986) 3 SCC 229 (Kashinath Dikshita vs Union Of India)** in which it was observed as follows:-

“10.This application was unceremoniously rejected by the Board on December 20, 1963 Please refer to your application No. KND/BI-2, dated December 3, 1963 regarding copies of documents and statement cited in evidence. The Board of Inquiry regrets that it is not possible for them to accede to your request since you have already been allowed by Government an access to the relevant official records for the purpose of preparing your written statement as provided under Sub-rule (4) of Rule 5 of the All India Service (Discipline and Appeal) Rules, 1955. It is thus clear that the appellant's request for supply of copies of relevant documents and statements of witnesses has been refused in no unclear terms We do not consider it necessary to burden the records by quoting the extracts from the letters addressed by the appellant and the reply sent to him. The extracts quoted hereinabove leave no room for doubt that the disciplinary authority refused to furnish to the appellant copies of documents and copies of statements. When a Government servant is



facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity-to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross examine the witness, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material ?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the Courts came to the conclusion that failure to supply these materials would be net amount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it, It is not even the case of the respondent that there was involved any consideration of security of State or privilege. No doubt the disciplinary authority gave an opportunity to the appellant to inspect (he documents and take notes as mentioned earlier. But even in this connection the reasonable request of the appellant to have the relevant portions of the documents extracted with the help of his stenographer was refused. He was told to himself make such notes as he could. This is evident from the following passage extracted from



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communication dated 25.7.1962 from the disciplinary authority to the appellant:

“The Government has been pleased to allow you to inspect II the documents mentioned in Annexure II to the charge-sheet given to you. While inspecting the documents, you are also allowed to take notes or even prepare copies, if you so like, but you will not be permitted to take a stenographer or any other person to assist you. In case you want copies of any specific documents, from out of those inspected by you, the request will be considered on merits in each cause by the Government. In case you want to inspect any document, other than those mentioned in Annexure II, you may make a request accordingly, briefly indicating its relevancy to the charge against you, so that orders of the Government could be obtained for the same, As pointed out above, if you wish to have copies of any specific documents, from those inspected by you, you should make a request in writing accordingly, mentioning their relevancy to the charge, so that orders of Government could be obtained.

Government, however, maintains that you are not entitled to ask for copies of documents as a condition precedent to your inspection of the same. I am further to add that in case you do not inspect the documents on the date fixed, you will do so at your own risk.””

The learned senior counsel requested this Court to direct the first respondent to provide the petition mentioned documents and thus, allow the writ petition.

7.The learned Additional Solicitor General of India on the other hand submitted that the petitioner is dragging on the matter. He also submitted that



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all the relied upon materials have been furnished to the petitioners and it is categorically asserted that the documents sought for by the petitioners do not pertain to the subject matter. The writ petition has been prematurely filed and that it deserves to be dismissed.

8.I carefully considered the rival contentions and went through the materials on record. It is true that in *Kashinath Dikshita*, the Hon'ble Supreme Court observed that the question that the authority should pose to themselves is what is the harm in making available the material and not take any rigid stand. But then, the case itself arose out of a challenge to a final order of dismissal. In other words, only as against the final order passed by the authority, the aforesaid observations came to be made. I find considerable merit in the stand of the learned Additional Solicitor General of India that at the interlocutory stage or before the final decision has been made, the petitioners cannot be allowed to knock the doors of the Writ Court again and again. In judicial review, the decision making process is scrutinized. But then, the noticee should normally come after the decision is rendered and not during the decision making process itself. I do not find any ground to interfere.



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9. Leaving open all the contentions of the writ petitioner, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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