

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

211

CWP-4502-2018 (O&M)
Date of Decision: 16.04.2024

UPL LTD. AND ANOTHER

... Petitioners

VERSUS

STATE OF PUNJAB AND ORS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Rohit Sood, Advocate
for the petitioner.

Ms. Harpriya Khaneka, DAG, Punjab

VINOD S. BHARDWAJ, J. (ORAL)

CM-4936-CWP-2018

The Registry has wrongly listed the instant application as the same
has already been allowed vide order dated 04.04.2018.

MAIN CASE

The present petition has been filed being aggrieved of the legality
and validity of the conditions imposed by the respondents requiring every
company desirous of obtaining/seeking renewal of licence to sell, stock or
exhibit for sale of insecticides to file affidavits of officers of the company
nominated to take responsibility under Section 33 of the Insecticides Act, 1968
including the quality control, conduct of business and Godown In-charge.

A detailed order was passed in CM-4937-CWP-2018, which reads
thus:

*“This petition is filed for seeking an interim relief for
restraining the respondents from insisting upon the affidavit in the
new format (Annexure P-17) containing declaration from the*

nominated Director(s) of the Company that he is the in-charge for looking after day to day business regarding work and conduct of the company and shall be fully responsible under Section 33 of the Insecticide Act, 1968 (hereinafter referred to as the "Act") and the Rules framed thereunder. The applicant-petitioner has also made a prayer to permit petitioner no.1 to file affidavit as per the format (Annexure P-1) prescribed in the list of compulsory documents issued by the respondents.

Learned counsel for the petitioner has submitted that as per Section 33 of the Act, every person who at the time the offence was committed was incharge 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. Section 33 of the Act is reproduced as under:-

"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"*

It is further submitted that for the purpose of obtaining license for sale etc of insecticides under Rule 10(4) of the Insecticides Rules, 1971 (hereinafter referred to as the "Rules"), the application is to be filed on a prescribed format and license is to be issued in Form-VIII. Rule 10(4) of the Rules and Form-VIII are reproduced as under-

"10. Licences for sale, etc., of insecticides.---

(1) to (3) XXX XXX XXX XXX

(4) A licence to sell, stock or exhibit for sale or distribute insecticides shall be issued in Form VIII and shall be subject to the following conditions, namely:-

- (i) The licence shall be displayed in a prominent place in the part of the premises open to the public.*
- (ii) The licensee shall comply with the provisions of the Act, and the rules made thereunder for the time being in force*
- (iii) Where the licensee wants to sell, stock or exhibit for sale or distribute any additional insecticides during the currency of the licence, he may apply to the licensing officer for necessary endorsement on the licence on payment of fees specified in sub-rule (2).*
- (iv) if the licensing officer is satisfied that a particular insecticide is harmful to human beings, animals or environment, he may after recording reasons and*

referring the Insecticide to the Insecticide Analyst, prohibit temporarily its sale for a period of thirty days or till he obtains the report of the Analyst, whichever is earlier."

FORM VIII

LICENCE TO SELL, STOCK OR EXHIBIT FOR SALE OR DISTRIBUTE INSECTICIDES, INCLUDING STOCK AND USE OF INSECTICIDES FOR COMMERCIAL PEST CONTROL OPERATIONS
[See sub-rules (3-A) and (4) of Rule 10]

License Number

License to sell, stock or exhibit for sale or distribute by retail the following insecticide(s) or carrying out commercial pest control operations on the premises situated at.....is granted to M/s as specified hereunder-

<i>Sl. No.</i>	<i>Particulars of the insecticide</i>	<i>Registration No.</i>	<i>Date of grant of license</i>

2. The license is subject to the provisions of the Insecticides Act, 1968 and the rules made thereunder for the time being in force as well as the conditions specified below.

Place.
Date:

Signature of the licensing officer
Seal

Conditions

- 1. The licence shall be displayed in a conspicuous place in the premises*
- 2. No insecticide shall be sold or exhibited for sale or distributed or issued for use in commercial pest control operations except in packages approved by the Registration Committee from time to time.*
- 3. If the licensee wants to sell, stock or exhibit for sale or distribute or use for commercial pest control operations any additional insecticide during the validity of the licence, he may apply to the licensing*

officer for issuance of licence for each such insecticide on payment of the prescribed fee.

4. *An application for the renewal of the licence for pest control operation shall be made as laid down in sub-rule (3-A) of Rule 10 of the Insecticides Rules, 1971.*
5. *Any other condition(s) may be specified by the Licensing Officer.*

*Signature of the licensing officer
Seal”*

Learned counsel for the petitioner has further submitted that by virtue of Annexure P-17, the respondents are asking the petitioner to file affidavit of all the Directors, whether he is in-charge of the affairs of the company or not, to take the responsibility. The said affidavit, which is attached as Annexure P-17, is reproduced as under:-

(Affidavit from Director/Partner/Proprietor of the Firm)

Affidavit

I, _____ S/o _____ R/o _____

_____ do hereby solemnly affirm and declare as under-

1. *That I am working as Director/Partner/Sole Proprietor of M/s_____. The said firm is manufacturing/ formulating/stocking/marketing Insecticides & Pesticides. I have been nominated by the company for the compliance of provision of section 33 of Insecticide Act, 1968 and Rules 1971, I am fully in-charge for looking after day to day business regarding work and conduct of the company. I shall be fully responsible under section 33 of insecticide Act 1968 and Rules 1971.*
2. *That I hereby undertake that Mr. _____, Godown Incharge, Mr. _____ Chemist, responsible for quality control and Mr. _____ responsible for Conduct of Business has been nominated by*

the company and will be responsible under section 33 of the Insecticides Act, 1968. In case these persons leaves/replaced/retires or terminated from the company, I shall nominate and authorize an alternate persons for these responsibilities under section 33 of the Insecticides Act, 1968. In case, authorized or nominated persons do not appear, I shall take the responsibility for the compliance of provisions of this Act.

3. *That I hereby undertake that I will ensure that all the conditions issued by Department of Agriculture, Punjab from time to time regarding manufacturing/sale of insecticide or pesticides shall be complied with. I shall further abide by all the instructions and guidelines of Govt. of India and will not violate any provisions of Insecticides Act 1968 & Insecticides Rules 1971. Failure to do so by me/my firm, shall render the license to suspend/cancellation.*

4. *That our firm M/s_____ will submit the detailed list of our dealers/distributors/wholesale suppliers in the Punjab State with quantity & packing size of pesticides supplied by the firm from the licenced premises.*

5. *That if we change any staff at any point of time, we will inform the Licensing Officer, Department of Agriculture, Punjab immediately. Failure to do so, the responsibility lies with the person as per license record.*

6. *That I shall submit a certificate in Form X to the Licensing Authority annually and abide by all the conditions laid down in the license.*

Dated

Place:-

Deponent

Verification:-

Verified that the above contents are true and correct to the best of my knowledge and belief and nothing has been concealed therein

Deponent”

In reply, learned State counsel has submitted that the licensing officer has the jurisdiction to impose this kind of condition and has referred to Condition No.5 of Form-VIII and has further submitted that as per the notification of the State of Punjab, the power in this regard has been given to the licensing officer, namely, Deputy Director Agriculture, Locust Control and Plant Protection. It is submitted that the said officer has been appointed as the licensing officer in terms of Section 12 of the Act. Section 12 of the Act is also reproduced as under:-

"12. Licensing officers. The State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be licensing officers for the purposes of this Act and define the areas in respect of which they shall exercise jurisdiction."

Learned Senior counsel appearing on behalf of the applicant- petitioner has submitted that Condition No 5 contained in Form-VIII would not over-ride the provisions of Section 33 of the Act for the purpose of including all other Directors, who are neither in-charge nor responsible to the company for the conduct of its business, to be proceeded against under the provisions of the Act for any kind of alleged offence and be punished accordingly. It is submitted that the petitioner would file the affidavit of the responsible person as provided under Section 33 of the Act.

After hearing learned counsel for the parties and taking into consideration all the facts and circumstances at this interim stage, the present application is hereby disposed of while restraining the respondents from insisting upon the petitioner to file the affidavit in the new format (Annexure P-17) and shall consider the application for grant of license, if it is already not issued, on the basis of the affidavit to be filed by the petitioner in terms of the provisions of Section 33 of the Act.

CM stands disposed of.”

Learned counsel for the petitioners contends that the respondents have, vide memo No.LCPP/ADO/20/933-36 dated 24.06.2020, dispensed with the mandate of furnishing of an affidavit which was subject matter of challenge in the present petition. He thus contends that the present petition may be disposed of at this stage in terms of the revised guidelines/memo dated 24.06.2020 issued by the respondent-Authorities.

Counsel for the respondents have no objection to the same.

In view of the revised memo dated 24.06.2020 issued by the respondents, the present writ petition stands disposed of as not pressed at this stage.

APRIL 16, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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