

Before S.J. Vazifdar, ACJ. and G.S. Sandhwalia, J.

SUN CROP TRADING CO. — *Petitioner(s)*

versus

UNION OF INDIA AND OTHERS — *Respondent(s)*

CWP No. 6731 of 2015

July 30, 2015

Insecticide Act, 1968—Ss. 3(e) 9 and —Insecticide Rules, 1971—R. 6(1)—Guidelines for dealing applications for registration under export only category as approved by the Registration Committee in 347th Meeting—Registration of insecticide for manufacture/import for sole purpose of export—Mention of name of approved supplier—Merely because name of one of approved supplies has been mentioned in Guidelines, it would not mean that Registration Committee would not consider an application under Section 9 for import of a scheduled insecticide manufactured or supplied by any other manufacturer or supplier—Source is only one of conditions upon which registration may be granted—Petitioner would only have to satisfy Registration Committee that actual product sought to be imported complied with all conditions and stipulations of Act.

Held that the said insecticide is included in the schedule of the Act. The question, therefore, is not whether the insecticide can be imported or not. The question is whether the petitioner is entitled to registration of the said insecticide under Section 9 of the Act. An application under Section 9 such as the petitioner does not seek the inclusion of the said insecticide in the schedule. It is already included in the schedule. The applicant/petitioner desires importing the same. It is inter alia such an importer who requires registration under the Act.

(Para 5)

Further held that all aspects regarding the import of the insecticide may be examined by the Registration committee under the Act to ensure that the same conforms to the specifications/requirements of Section 9. Even assuming Section 9(3) does not compel the Registration Committee to verify the source, it would make no difference in this case for the condition in the Guidelines quoted in the first paragraph of this judgment is that:-

“Import under this category shall be permitted only from a source approved by the Registration Committee.”

(Para 6)

Further held that the Registration Committee has the power to impose such a condition for sub-section (3) of Section 9 Provides that the Committee may register the insecticide “on such conditions as may be specified by it” The source of a sensitive substance is an important factor. It would not be surprising for a Committee to satisfy itself about the suitability of a source. In a given case, the Registration Committee may even limit the sources to those specified by it. The validity of such a decision to limit the sources must be tested in the facts of a given case. The Registration Committee has not sought to do so in this case.

(Para 7)

Further held that the Act itself clearly indicates the same. For instance, under Rule 6, such an importer is required to submit Form 1. Form 1 inter alia requires an applicant for registration to furnish the name and address of the manufacturer whose product the applicant intends importing. It also requires the name and address of the supplier duly authorized by the manufacturer from whom the product sought to be imported may be acquired. The authorities, therefore, may examine every aspect of the actual scheduled product that is sought to be imported.

(Para 8)

Further held that the respondents have rightly clarified that merely because Syngenta Crop protection AG Monthey, Switzerland has been mentioned as one of the approved suppliers, it does not mean that the Registration Committee will not consider an application under Section 9 for the import of a scheduled insecticide manufactured or supplied by any other manufacturer or supplier. The source is only one of the conditions upon which the registration may be granted. If the Registration Committee is satisfied about the suitability of a source, it would permit the registration subject to the import from that source. However, various aspects of such a manufacturer or supplier who have not already been approved would have to be examined by the Registration Committee under the Act before permitting the registration. In other words, the petitioner’s application will not be rejected merely because the petitioner intends importing the said insecticide from a company other than Syngenta Crop Protection AG Monthey, Switzerland. It only means that the petitioner would have to satisfy the Registration Committee that the actual product sought to be

imported complies with all the conditions and stipulation of the Act and in particular, Section 9 thereof . The petitioner, for instance, has already made an application and he has been informed by the authorities that there are certain deficiencies. We express no opinion in that regard.

(Para 9)

Jagmohan Bansal, Advocate,
for the petitioner.

Ranjana Shahi, Advocate
for respondents no. 1 and 2.

Sunish Bindish, Advocate
for respondent no. 3

S.J. VAZIFDAR, A.C.J. (Oral)

(1) The petitioner has challenged the following condition in the guidelines for dealing with applications for registration under the export category as approved by the Registration Committee in 347th meeting

“II SPECIFIC

(A) Categories of pesticides for Export Registration category-II

Import of technical grade pesticide, which is registered for manufacture/import and use in india for the sole purpose of Export either as technical itself or after converting it into formulation(s) Import under this category shall be pennilled only from a source approved by the Registration Committee (emphasis supplied)

(2) The petitioner’s grievance is that import from only one supplier of Difenonazole Technical 92% min, an insecticide, has been approved so far as imports are concerned namely Syngenta Crop Protection AG Monthey, Switzerland . The petitioner contends that there is no power in the authorities under the Insecticides Act, 1968 (for short ‘the Act’) to limit the source of import to only a particular supplier or to particular supplier in China. The apprehension is unfounded.

(3) Section 3(e) and Section 9 of the Insecticides Act, 1968 read as under:-

“3(e) “Insecticide “ means –

- i. any substance specified in the schedule : or
- ii. such other substances (including fungicides and weedicides) as the Central Government may. After consultation with the Board, by notification in the official Gazette, include in the schedule from time to time; or
- iii. Any preparation containing any one or more of such substances;

9 Registration of insecticides

1) Any person desiring to import or manufacture any insecticide may apply to the Registration committee for the registration of such insecticide and there shall be separate application for each such insecticide:

Provided that any person engaged in the business of import or manufacture of any insecticide immediately before the commencement of the section shall make an application to the Registration committee within a period of (seventeen months) from the date of such commencement for the registration of any insecticide which he has been importing or manufacturing before that date.

[Provided further that where any person referred to in the preceding proviso fails to make an application under that proviso within the period specified therein. He may make such application at any time thereafter on payment of a penalty of one hundred rupees for every month or part thereon after the expiry of such period for the registration of each such insecticide.]

2) Every application under sub-section (1) shall be made in such form and contain such particulars as may be prescribed.

3) On receipt of any such application for the registration of an insecticide, the committee may after such enquiry as it deems fit and after satisfying it self that the insecticide to which the application relates conforms to the claims made by the importer or by the manufacturer. As the case may be, as regards the efficacy of the insecticide and its safety to human beings and animals, register on such conditions as may be specified by it and on payment of such fee as may be prescribed, the insecticide, allot a registration number

thereto and issue a certificate of registration in token thereof within a period of twelve months from the date of receipt of the application:

Provided that the committee may, if it is unable within the said period to arrive at a decision on the basis of the materials placed before it, extend the period by a further period of not exceeding six months.

Provided further that if the committee is of opinion that the precautions claimed by the applicant as being sufficient to ensure safety to human beings or animals are not such as can be easily observed or that not with standing the observance of such precautions the use of the insecticide involves serious risk to human beings or animals it may refuse to register the insecticide.

(3-B) where the Registration Committee is of opinion that the insecticide is being introduced for the first time in India, it may, pending any enquiry, register it provisionally, for a period of two years on such conditions as may be specified by it.

(3-C) The Registration Committee may, having human beings and animals, vary the conditions subject to which a certificate or registration has been granted and may for that purpose require the certificate holder by notice in writing to deliver up the certificate to it within such time as may be specified in the notice]

4) Notwithstanding anything contained in this section, where an insecticide has been registered on the application of any person, any other person desiring to import or manufacture the insecticide or engaged in the business of, import or manufacture thereof shall on application and on payment of prescribed fee be allotted a registration number and granted a certificate of registration in respect thereof on the same conditions on which the insecticide was originally registered.”

(4) Rule 6(1) of the Insecticides Rules, 1971 reads as under:

“6. Manner of Registration [(1) (a) An application for registration of an insecticide under the Act shall be made in Form I and the said Form including the verification portion,

shall be signed in case of an individual by the individual himself or a person duly authorized by him; in case of Hindu Undivided Family, by the Karta or any person duly authorized by him; in case of partnership firm by the managing partner; in case of a company, by and person duly authorized in that behalf by the Board of Directors; and in any other case by the person in charge of responsible for the conduct of the business.

Any change in members of Hindu Undivided Family or partners or the Board of Directors or the person in charge, as the case may be, shall be forthwith intimated to the Secretary, Central Insecticides Board and Registration Committee and the Licensing Officer.

(b)The Registration Committee may, if necessary direct inspection of the “testing facility” for establishing the authenticity of the data.

(5) The said insecticide is included in the schedule of the Act. The question, therefore, is not whether the insecticide can be imported or not. The question is whether the petitioner is entitled to registration of the said insecticide under Section 9 of the Act. An application under Section 9 such as the petitioner does not seek the inclusion of the said insecticide in the schedule. It is already included in the schedule. The applicant/petitioner desires importing the same. It is inter alia such an importer who requires registration under the Act.

(6) All aspects regarding the import of the insecticide may be examined by the Registration committee under the Act to ensure that the same conforms to the specifications/requirements of Section 9. Even assuming Section 9(3) does not compel the Registration Committee to verify the source, it would make no difference in this case for the condition in the Guidelines quoted in the first paragraph of this judgment is that:-

“Import under this category shall be permitted only from a source approved by the Registration Committee.”

(7) The Registration Committee has the power to impose such a condition for sub-section (3) of Section 9 Provides that the Committee may register the insecticide “on such conditions as may be specified by it” The source of a sensitive substance is an important factor. It would not be surprising for a Committee to satisfy itself about the suitability of a source. In a given case, the Registration Committee may even limit

the sources to those specified by it. The validity of such a decision to limit the sources must be tested in the facts of a given case. The Registration Committee has not sought to do so in this case.

(8) The Act itself clearly indicates the same. For instance, under Rule 6, such an importer is required to submit Form 1. Form 1 inter alia requires an applicant for registration to furnish the name and address of the manufacturer whose product the applicant intends importing. It also requires the name and address of the supplier duly authorized by the manufacturer from whom the product sought to be imported may be acquired. The authorities, therefore, may examine every aspect of the actual scheduled product that is sought to be imported.

(9) The respondents have rightly clarified that merely because Syngenta Crop protection AG Monthey, Switzerland has been mentioned as one of the approved suppliers, it does not mean that the Registration Committee will not consider an application under Section 9 for the import of a scheduled insecticide manufactured or supplied by any other manufacturer or supplier. The source is only one of the conditions upon which the registration may be granted. If the Registration Committee is satisfied about the suitability of a source, it would permit the registration subject to the import from that source. However, various aspects of such a manufacturer or supplier who have not already been approved would have to be examined by the Registration Committee under the Act before permitting the registration. In other words, the petitioner's application will not be rejected merely because the petitioner intends importing the said insecticide from a company other than Syngenta Crop Protection AG Monthey, Switzerland. It only means that the petitioner would have to satisfy the Registration Committee that the actual product sought to be imported complies with all the conditions and stipulation of the Act and in particular, Section 9 thereof. The petitioner, for instance, has already made an application and he has been informed by the authorities that there are certain deficiencies. We express no opinion in that regard.

(10) The writ petition is accordingly disposed of.

P.S. Bajwa