

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.326 of 2011

Sri Ashok Bhattacharjee,
son of Sri Amulya Chandra Bhattacharjee,
resident of 31, Harish Thakur Road,
Krishnanagar, Agartala,
P.S. West Agartala,
District - West Tripura
Proprietor of Sri Ram Fertiliser and Agro Chemicals.

.....Petitioner

- Vs -

1. The State of Tripura,
to be served upon the Secretary,
Department of Agriculture,
Government of Tripura,
New Secretariat Complex,
P.O. Agartala, P.S. West Agartala,
District-West Tripura
2. The Secretary to the Government of Tripura,
Department of Agriculture,
New Secretariat Complex,
P.O. Agartala, P.S. West Agartala,
District-West Tripura
3. The Director of Agriculture,
Government of Tripura,
Krishi Bhaban, Old Secretariat Area,
P.O. Agartala, P.S. West Agartala,
District-West Tripura
4. The Executive Engineer,
Central Public Works Department,
Airport, P.O. Agartala Airport,
P.S. Airport, District-West Tripura
5. The Chief Engineer,
Public Works Department (R & B),
New Capital Complex, Agartala,
P.O. Agartala, P.S. West Agartala,
District-West Tripura
6. The Joint Rubber Production Commissioner,
Rubber Board, Chanmari, (GB), Agartala,
P.O. Kunjaban, P.S. East Agartala,
District-West Tripura
7. The Director General of Police,
Police Department,
New Capital Complex, Agartala,
P.O. Agartala, P.S. West Agartala,
District-West Tripura

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Ms. S. Deb Gupta, Advocate
For the respondents No.1, 2, 3, 5 & 7	: Mr. S. Chakraborty, Addl. GA
For the respondent No. 4	: None
For the respondent No. 6	: Mr. S. Kar Bhowmik, Advocate
Date of hearing and delivery of Judgment and order	: 30.07.2015
Whether fit for reporting	: NO

Judgment and Order (Oral)

Heard Ms. S. Deb Gupta, learned counsel appearing for the petitioner as well as Mr. S. Chakraborty, learned Addl. GA appearing for the respondents No.1, 2, 3, 5 & 7 and Mr. S. Kar Bhowmik, learned counsel appearing for the respondent No. 6, the Joint Rubber Production Commissioner, Rubber Board, Chanmari, (GB), Agartala.

02. The petitioner deals in agro chemicals and operations of the commercial pest control. He has asserted that he has got the necessary licence to deal in agro chemicals and to carry out commercial pest control operations. The petitioner has also been permitted to purchase, stock/use of Aluminium Phosphide within the State of Tripura for fumigation of agricultural commodities/ship fumigation for control of stored grain-pests, in accordance with the relevant provisions of Section 18 of the Insecticides Act, 1968, as amended from time to time, by the Certificate No.18/2009 dated 14.08.2009 issued by the Plant Protection Adviser to the Government of India, Ministry of Agriculture (Department of

Agriculture and Co-operation), Directorate of Plant Protection, Quarantine and Storage.

03. According to the petitioner, subterranean termites live in underground colonies and send out workers in search of food. These termites never sleep. They are constantly at work. They build tubes and tunnels to cross open areas and keep out of sight. Termites can penetrate any type of building and construction. But the termites can be controlled by appropriate chemicals.

04. To regulate the pest control activities including the use of insecticides, the Insecticides Act, 1968 was promulgated by the Parliament. The petitioner having observed that in the Government buildings and constructions, to avoid the termites' activities, no preventive action is being taken according to the CPWD's Manual (para 2.26.3.0) and approached this Court by filing this petition for direction to observe the objective of Insecticides Act, 1968. Chemical treatment of soils for the protection of buildings from attack of subterranean termites is essentially to be done as per IS:6313 (Part II). Treatment shall be done by the approved specialised agencies on using the chemicals procured directly by the Engineer-in-Charge from the reputed and authorised dealers. Graduated containers shall be used for dilution and spraying of the chemical using hand operated pressure pumps. Proper check should be maintained to ensure that the specified quantity of chemical is used for the required area during the operation.

05. The petitioner's grievance is that even though he is a specialised agency in the subterranean pest control activities and

he has the required licence under Section 10(3A) of the Insecticides Rules, 1971, the Government agencies are not using his service or they are not observing the manual of the CPWD which has been adopted by the Public Works Department, Government of Tripura and other instrumentalities of the State for carrying out the construction activities.

06. By filing a supplementary affidavit, the petitioner has further stated that once some agencies were engaged to conduct the pest control operations, but those agencies had no valid licence under Section 10(3A) of the Insecticides Rules, 1971. Such activities, according to the petitioner, are entirely against the statutory provision and cannot be pursued by the Government or its agencies. Similar allegations have been levelled against the respondent No.6 as the said respondent, according to the petitioner, carried out some construction activities in the state of Tripura.

07. The prayer is very plain and simple that the commercial pest control operations shall be carried out and be carried out only by the specialised and licensed agencies, accredited under Section 10(3A) of the Insecticides Rules, 1971.

08. Mr. S. Chakraborty, learned Addl. GA appearing for the state has made two-fold submissions: (1) that the state respondents do not have any fundamental opposition to what has been stated in the writ petition as the State Government has been following the CPWD Manual for carrying out the scheduled construction and in such constructions, the commercial pest control

is being carried out by the outsourced agencies and those agencies are asked to ensure compliance of the CPWD Manual. No specific complaint regarding non-compliance has been brought to the notice of the state-respondents asking any valid action and (2) that the State Government has never allowed any agency to carry out such activities without the licence under Section 10(3A) of the Insecticides Rules, 1971 even if somewhere, as pointed out by the petitioner, some agencies which do not have such licence have been permitted to do such activities, in future such type of engagement will not be continued.

09. Mr. S. Kar Bhowmik, learned counsel appearing for the respondent No.6 has submitted that seldom the respondent No.6 carries out the construction work and all the construction works are outsourced to the agency namely National Buildings Construction Corporation Ltd. (NBCC, in short) and that agency has followed all requirements of the manual. No specific allegation has ever been made to them as regards any deviation from the standard procedure.

10. Having regard to the records, filed along with the writ petition, averments made in the writ petition and the counter affidavits filed by the respondents and in view of the statutory provisions as laid by the 10(3A) of the Insecticides Rules, 1971, this writ petition can be disposed of with the following observation:

Since the State Government has adopted the CPWD Manual where it has been categorically stated that for protecting the buildings from the attack of the subterranean termites, the

chemical treatment of soils shall be done as per IS:6313 (Part II), the treatment shall be got done only by the approved specialised agencies using the chemical procured directly by the Engineer-in-Charge from reputed and authorized dealers etc. All the constructions as would be carried out by the State Government or its enterprises or undertakings shall comply this clause 2.26.3.0 of the Manual. It is needless to say that approved specialised agencies shall always mean the agencies which are licensed to carry out the commercial pest control activities under Section 10(3A) of the Insecticides Rules, 1971. No other agency can legally be permitted to carry out such commercial pest control or chemical treatment of the soil for protection of the buildings from attack of subterranean termites under any circumstances as inefficient use of the chemicals may lead to percolation to the soil and that may invite serious and fatal health and environmental hazards to the people. If any construction is not required such subterranean control then the highest authority shall take a decision to exempt those constructions after recording reasons for such exemption. But that shall not be as a matter of rule, but only in the exceptional cases.

With the observation as above, this writ petition stands disposed of. No order as to costs.

JUDGE

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