

SMT. JUSTICE T. RAJANI

WRIT PETITION No.17049 OF 2019

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, seeking to declare the action of the respondents in interfering with manufacture, sale and marketing of bio-products of petitioner-company, as illegal.

2. Heard the counsel for the petitioner and the Government Pleader for Agriculture appearing for the respondents.

3. The counsel for the petitioner submits that the petitioner is a company, which is engaged in the business of manufacture, sale and supply of bio-products, under the name and style of '*Varsha Bioscience and Technology India Private Limited*'. The second respondent issued a Memo No.PPII(1)2085/2005, dated 21.1.2006 and the consequential letter of the even date, which the petitioner claims as illegal. The Memo is to the effect that bio-products, which have been manufactured by the petitioner, are not covered either in the Insecticides Act, 1968 or Fertilizer (Control) Order, 1985.

4. The counsel for the petitioner submits that in similar circumstances, the High Court of Judicature at Hyderabad disposed of W.P. No.25293 of 2014 and batch, by order dated 10.7.2015, with certain guidelines. Another learned Single Judge of the High Court of Judicature at Hyderabad in W.P. Nos.14458 of 2019 and batch, dated 16.7.2019, while extracting the guidelines in W.P. No.25293 of 2014 and batch, and the

observations of the Division Bench, in appeals, in Writ Appeal Nos.1122 and 1136 of 2016, dated 03.11.2016, observed at paragraph Nos.4 and 5 as follows:

4. However, to make the issue clear, the observations and directions of the learned Single Judge in paragraphs 17 to 19 are extracted herein:

“17. It is not clear from the averments made in the affidavits filed in support of these writ petitions, whether all the petitioners are indulging in similar type of activities or not. It is also not clear whether all the petitioners are manufacturers or dealers in the bio-products. The bio-product is a broad word which may include a bio-fertilizer or some other material substance containing insecticidal properties. But, the product in which the petitioners are dealing is being used in agriculture only. The case of the petitioners is that in the absence of any law, the respondents cannot interfere with their activities, whereas, the respondents state that in the absence of any information furnished by the petitioners, they are handicapped in regulating their activities. 18. In the said circumstances, this Court cannot hold that the activities of the petitioners and the interference of the respondents are totally illegal. A balance has to be maintained in the facts and circumstances of the case, but such balance must have the sanction of law. The existing provisions are the provisions of Insecticides Act and Fertilizer (Control) Order. The provisions of these two enactments are sufficient to regulate the activities of the petitioners. Before taking any action on suspicion, it is necessary for the authorities to take a sample of the product in which the petitioners are dealing. On the basis of such sample only, the respondent authorities can see whether one or the other provisions of the said enactments can be applied. The respondents cannot interfere with the activities of the petitioners without following due process of law. The petitioners are entitled to exercise their fundamental right guaranteed under Article 19 (1)(g) of the Constitution of India, but the said right is subject to a restriction enunciated in the said Article.

19. Keeping in view the above facts and circumstances, all these writ petitions are disposed of with the following directions:

i) The petitioners shall not deal with bio-products without maintaining proper packing and marking of the product. The packing of bio-products shall contain the ingredients included in the product, analytical procedure and their percentage. This enables the authority to verify the contents of the product.

ii) The manufacturer of every bio-product should intimate the concerned Commissioner of Agriculture with regard to the manufacturing activity undertaken by it with name of the product, process and its content. The Commissioner of Agriculture need not grant any permission and mere information from the manufacturer is enough for this purpose. The Commissioner of Agriculture shall issue an acknowledgement of such information.

iii) The dealer of bio-products should have the information with regard to the source of purchase of bio-products and shall maintain a register for the said purpose in order to enable the authorities to inspect the stock from time to time.

iv) It is for the authorities to inspect the bio-products in the location of the manufacturer prior to its dispatch to the dealer or

in the location of the dealer and take sample thereof in order to verify whether any such product contains harmful substances attracting the provisions of Insecticides Act, 1968 or used as a fertilizer violating the provisions of Fertilizer (Control) Order, 1985. The sample of the product shall be collected from the said source by the authorities under the signature of the persons dealing with bio-products and the authority who is collecting for the purpose of sending it to the appropriate Laboratory in order to verify the contents of the said product.

v) From a copy of the report if any prohibited substance is found by the authority, the authority shall issue a notice along with a copy of the report to the persons dealing with the product and take necessary action against such persons either under the provisions of Insecticides Act, 1968 or Fertilizer (Control) Order, 1985. After receipt of the explanation from the person, the authority can pass appropriate orders under the provisions of the said enactments.

vi) The report from the concerned Laboratory shall be obtained as expeditiously as possible, preferably not later than a week from the date of collection of the sample and till such time, the concerned authority can withhold manufacture and sale of bio-product. Against the order passed by the authority who collected sample, the aggrieved party can file an appeal to the higher authority as provided in the above provisions if so advised.

vii) The collection of samples and the process of passing order shall not be resorted to routinely but should be on credible information that the product is causing damage to the public agriculture activity and on prima facie satisfaction of such information. viii) The respondents shall not violate the law and resort to unnecessary harassment of the manufacturers or dealers in a routine manner.”

5. In appeal, the Division Bench observed as follows:

“While we are in complete agreement with the submission of Sri S.Niranjan Reddy, Learned Senior Counsel appearing on behalf of the respondent-writ petitioner, that there cannot be an omnibus categorisation, of all bio-products as insecticides, for the purpose of taking action under the Act, the grounds on which the Insecticide Inspector has reason to believe, that insecticides are being sold in contravention of the provisions of the Act and the Rules, would depend upon the facts of each case, and cannot be circumscribed by way of guidelines issued by this Court. The guidelines prescribed, in the order under appeal, can only supplement and not supplant the law, and would remain in force only till appropriate legislation- either plenary or subordinate -is made in this regard. Suffice it, while making it clear that there cannot be an omnibus categorisation of all bio-products as insecticides for taking action against the dealers of those goods, to also make it clear that the guidelines, prescribed in the order under appeal, shall be in addition to, and not in derogation of, the powers conferred on the concerned authorities under the Act and the Rules. We may not be understood to have expressed any opinion on whether or not any of these bio-products are insecticides, as these are matters which the authorities concerned are required to examine in accordance with the provisions of the Act, the Rules made thereunder, and the guidelines stipulated in the order under appeal. The order under appeal is modified to the extent indicated hereinabove, and the Writ Appeals are disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.”

5. Hence, in view of the above observations, subject to the petitioner complying with the guidelines issued by the learned Single Judge in W.P. No.25293 of 2014 and batch, as confirmed by the Division Bench in W.P. Nos.1122 and 1136 of 2016, the respondents shall not interfere with the manufacturing, distribution and sale of bio-products. However, this order does not preclude the respondents to inspect the petitioner-company, in accordance with the provisions of the Insecticides Act and the Fertilizer (Control) Order, if so require, by following due procedure and taking appropriate steps as warranted by law.

6. The writ petition, with the above direction, is disposed of. As a sequel, miscellaneous petitions pending consideration if any in the writ petition shall stand closed.

SMT T. RAJANI, J

October 31, 2019.

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