

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.1572 of 2020

ORDER:

This Writ Petition is filed questioning the action of the respondents in interfering with the sale and distribution of bio-products of the petitioner-company, which are not covered under the Insecticides Act, 1968 and Fertilizers (Control) Order, 1985, as illegal and arbitrary.

Petitioner-company has established manufacturing unit to manufacture agricultural products (bio-products) in Andhra Pradesh State and marketing and distributing the same in the State of Andhra Pradesh and paying taxes to the concerned Government. Even though it is not necessary to obtain any permission for marketing the above bio-products, the second respondent, who is regulatory authority for the supervision and control of insecticides and pesticides, insisted for obtaining marketing permission for sale of bio-products of the petitioner-company and distributed by the dealers, vide proceedings, dated 21.01.2006, stating *inter alia* that since the bio-products are not covered by the Insecticides Act, 1968 or the Fertilizer Control (Order) Act, 1985 the stocking, storing or the sale of the said products from the licenced premises will not be permitted.

Aggrieved by the said memo, dated 21.01.2006, some of the Manufacturers and Distributors have filed W.P.Nos.25293

of 2014 & batch and the said batch of Writ Petitions were allowed by this Court, directing the respondent authorities therein not to interfere with the store, sale and distribution of bio-products of the petitioners therein. Despite the same, the officials of the second respondent are insisting the petitioner not to sell, exhibit and market the bio-products. Hence, the present Writ Petition.

On the other hand, learned Government Pleader appearing for the respondents submits that against the order, dated 10.07.2015, in W.P.Nos.25293 of 2014 & Batch, W.A.Nos.1122 and 1136 of 2016 have been filed and the Division Bench of this Court modified the said order passed by the learned single Judge.

The learned single Judge disposed of the said Writ Petitions and batch with the following directions:

“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 despatch 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.

- ix) *In case of violation of the above directions, it is open to the petitioners to bring it to the notice of the higher authorities of the action of the officers violating the directions, and the higher authority to the authority interfering with the activity of the petitioners shall dispose of the representations with utmost expediency and not later than ten days from the receipt thereof”.*

The Division Bench of this Court, in the said Writ Appeals, observed that some of the conditions prescribed therein appear to run contrary to the provisions of the Act and categorically held that clause 6 of the guidelines, which requires a report from the concerned laboratory, to be obtained not later than a week from the date of collection of the sample is contrary to time limit of one month specified in Section 21 (1) (d) of the Act. The Division Bench also observed that the condition No.7 in the said judgment of the learned single Judge, which requires credible information to form basis of collection of sample, may well be construed as restricting the power conferred under Section 21 (1) (d) of the Act, wherein the Insecticide Inspector is given the power to withhold the stock if he has reason to believe that insecticides are being distributed, sold or used in contravention of the provisions of the Act and the rules made thereunder. The Division Bench also clarified that the guidelines prescribed

therein will only supplement and not supplant the law and that the said guidelines prescribed by the learned single Judge are in addition to, and not in derogation of the powers conferred on the concerned authorities under the Act and the Rules.

In view of the same, Writ Petition is disposed of in terms of the judgment, dated 03.11.2016, in W.A.Nos.1122 and 1136 of 2016 and the respondent authorities are at liberty to take action in accordance with the clarifications given by the Division Bench of this Court. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

KONGARA VIJAYA LAKSHMI, J.

31st January, 2020.
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