

(2014) 07 GUJ CK 0070

In the Gujarat High Court

Case No : Special Civil Application Nos. 6874, 6875, 6876, 6895 and 6914 of 2014 and Civil Application No. 7112 of 2014 in Spl. C.A. No. 6874 of 2014 to Civil Appli. No. 7116 of 2014 in Spl. C.A. No. 6914 of 2014

Bayer Cropscience Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226
Insecticides Act, 1968 — Section 17, 21, 21(2), 21(3), 22

Citation : (2014) 3 GLR 2624

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : Mihir Thakore, Sr. Advocate for Nanavati Associates, Advocate for the Appellant; K.T. Dave, Advocate for the Respondent

Judgement

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Rajesh H. Shukla, J.

Rule. Service of Rule is waived by learned Advocate Shri K.T. Dave for respondent Nos. 1-2 and learned Advocate Ms. Manisha Lavkumar Shah for respondent Nos. 3-25.

1. As common issues are involved, the present petitions have been heard together along with the Civil Applications filed by the applicants-original respondent Nos. 3-25 praying for vacating the interim relief granted in the main matters. The present petitions have been filed by the petitioners under Arts. 14, 19(1)(g) and 226 of the Constitution of India as well as under the Insecticides Act, 1968 (hereinafter referred to as "the Act") and Insecticides Rules, 1971 (hereinafter referred to as "the Rules") for the prayers, inter alia, that appropriate writ, order or direction may be issued quashing and setting aside the impugned guidelines issued by respondent No. 2-Registration Committee published by way of Minutes of the 347th Meeting at Annexure-A, on the grounds

stated in the memo of petitions.

2. Heard learned Sr. Counsel Shri Mihir Joshi for M/s. Nanavati Associates appearing for some of the petitioners in this group of petitions.

3. Learned Sr. Counsel Shri Joshi referred to the papers and the impugned fresh guidelines which is produced at Annexure-A and pointedly referred to the background of the earlier litigation being Special Civil Application No. 2530 of 2013 and Special Civil Application No. 7928 of 2011 where also the guidelines were challenged by the indigenous manufacturers (some of the applicants who have been impleaded as party-respondents in the present petitions). Learned Sr. Counsel Shri Joshi submitted that these fresh guidelines at Annexure-II which are purported to have been issued or modified pursuant to the order of this Court earlier are in fact affecting the rights of the petitioners. For that purpose, he pointedly referred to Annexure-II at page 57 in Spl. C.A. No. 6895 of 2014 and pointedly referred to clause 4 of the said guidelines and submitted that the condition that the sample of every consignment of formulation shall be drawn at the port and subject to the test of quality is added/modified by misconstruing the earlier order passed by this Court in Civil Application No. 7969 of 2013 in Special Civil Application No: 7928 of 2011 and allied matters dated 5-9-2013. He submitted that while considering the guidelines as existed which was a subject-matter in the earlier group of petitions the Court has for the reasons stated therein passed the order directing suitable guidelines to be framed which has been misinterpreted and which has been construed as a mandatory procedure which was not there. He, therefore, submitted that this misconception has led to such fresh guidelines or modifications which are challenged in the present petitions.

4. Learned Sr. Counsel Shri Joshi submitted that though fresh guidelines are issued, or are sought to be implemented, the Registration Committee is not having the authority to frame any such guidelines. He, for that purpose, referred to the order passed by this Court in earlier round of litigation, i.e., Civil Application No. 7969 of 2013 in Special Civil Application No. 7928 of 2011 and allied matters dated 5-9-2013 and submitted that the Court had observed that the Registration Committee which is a creature of the Act or the statute cannot go beyond the powers and functions laid down in the statute. He submitted that when the Registration Committee has only to function as provided in the statute, it cannot lay down or modify the guidelines, and therefore, there is no provision for the guidelines to be made by the Registration Committee. Learned Sr. Counsel Shri Joshi submitted that assuming that it is a guideline framed validly by the Government, there is no authority or provision in the statute itself to impose any such condition that the sample should be tested before they are marketed.

5. Learned Sr. Counsel Shri Joshi also referred to the order passed by this Court in Misc. Civil Application (For modification of order) No. 2483 of 2013 in Civil Application No. 8074 of 2013 in Spl.C.A. No. 2530 of 2011 and allied matters

dated 28-3-2014 and submitted that a clarification was also made by the Court that the technical grade may not be insisted upon every time when the formulation is imported. He referred to Annexure-D which is an order passed by this Court earlier dated 5-9-2013 in Civil Application No. 7969 of 2013 in Spl.C.A. No. 792S of 2011 and allied matters and pointedly referred to Paras 46 and 47 of the order which modified the interim relief subject to the conditions prescribed therein. Learned Sr. Counsel Shri Joshi referred to Para 47(a) and submitted that while vacating the interim relief and permitting the import of formulations, these conditions were imposed which have been further clarified by a subsequent order dated 28-3-2014. He, therefore, submitted that what was suggested was that the technical grade may not be insisted and imposing such condition for testing the sample of the imported formulations at the port itself is unreasonable restriction on the right of the petitioners to carry on trade or business.

6. Learned Sr. Counsel Shri Joshi referred to the provisions of the scheme of the Act read with the Rules and submitted that there are sufficient safeguards which can take care of the apprehension, or if there is any lapse in the quality of the formulations which are imported, he emphasised that when the Legislature has provided for the remedy which can be pursued including the complaint as well as inspection, it only suggests that the authority may, when it desires, can inspect and verify the sample of formulation. He submitted that it is, however, wrongly construed under a misconception that the sample of every consignment at the port must be drawn and tested before it can be cleared for its marketing and sale. He, therefore, submitted that this procedure adopted is not contemplated in the Act or the Rules and the authorities cannot lay down any such procedure or guidelines by which it imposes any such unreasonable restrictions on the right of the petitioners to carry on trade or business. He submitted that if the consignment is received and the goods are lying at the port and if the sample is taken it may require some time for testing and till then it will be kept at the port. He submitted that if there is delay in testing, again it may cause inconvenience in the form of additional cost of demurrage and also it affects the commercial interest. On the other hand, learned Sr. Counsel Shri Joshi submitted that, if the sample is taken and it is allowed to be cleared from the port, it would go to the importers' warehouse or godown or it may reach the distributor or dealer and if the authorities have any doubt, an inspection could be carried out as provided in the Act or the Rules and suitable steps could be taken.

7. Learned Sr. Counsel Shri Joshi referred to Sec. 21 of the Act and submitted that it clearly provides that if there is a reason to believe on the part of the authority or the officer, he can enter and search the premises. He submitted, that therefore, adequate measures have been provided to prevent the damage if the officer has "reason to believe" that there is a large-scale illegality or spurious material which is likely to go in the market. It runner provides for preventive steps and also confiscation. Learned Sr. Counsel Shri Joshi submitted that as provided in Secs. 24 and 25 in such cases the sample could be taken and report of the Analyst could be called for, and thereafter, it could be confiscated. He

submitted, that therefore, it has to be on a case to case basis and any. such measure to test the sample of every consignment at the port itself before clearance is beyond the authority or power and no such procedure is contemplated by the Act or the Rules.

8. Learned Sr. Counsel Shri Joshi also referred to the provisions of Secs. 5 and 17 of the Act. He submitted that Sec. 17 refers to the prohibition on import and manufacture of certain insecticides. Further, Sec. 5 refers to the functions of the Registration Committee. He submitted that the Legislature and the Government being conscious about the fact that certain pesticides are harmful or rather more harmful, a provision for prohibition could be imposed for import and manufacture of such pesticides. At the same time, subject to some safeguards and regulations it may also have to be permitted as a necessary evil. He, therefore, submitted that the Registration Committee cannot permit any guideline as it is not empowered by the statute, and therefore, as there is no power or authority vested in it, and any such procedure adopted on purported guidelines is without authority and illegal.

9. Learned Sr. Counsel Shri Joshi, therefore, referred to the earlier round of litigation with regard to the registration and the recourse of test for the purpose of technical grade and the deemed registration which could be claimed by the local manufacturers. He submitted that it is an arm twisting method so that the petitioners who are importers of the pesticides are required to submit technical grade though it is not necessary for the purpose of import of formulation. He submitted that such guidelines or procedure is adopted at the instance of local manufacturers. Learned Sr. Counsel Shri Joshi submitted that what has not been provided in the statute itself cannot be provided by way of such guidelines or executive instructions and it cannot go beyond the statute.

10. In support of his submissions, learned Sr. Counsel Shri Joshi has referred to and relied upon the judgment of the Hon''ble Apex Court in the case of State of Haryana Vs. Mahender Singh and Others, . He emphasised that executive instructions cannot prevail over the statute or the rules. He submitted that such guidelines have no statutory force. He has also referred to and relied upon the judgment of the Hon''ble Apex Court in the case of General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others, . He again referred to the judgment of the Hon''ble Apex Court in the case of Union of India (UOI) and Others Vs. S. Srinivasan, and submitted that the guidelines as framed by the Registration Committee is beyond the powers and without jurisdiction. Learned Sr. Counsel Shri Joshi, therefore, submitted that when the statute is not providing for any such procedure by way of guidelines, it cannot be made, and therefore, any such guideline is irrational, discriminatory, which is required to be set aside. He submitted that when these guidelines were framed or modified, clause 4 which is the most relevant was not on the website for comments by the importers like the petitioners.

11. Learned Counsel Ms. Manisha Lavkumar Shah referred to the background of

the case and submitted that the guidelines are framed by the Registration Committee which itself was a subject-matter of challenge in the earlier round of litigation being Spl.C.A. No. 2530 of 2011 and allied matters filed by some of the respondents herein who are the local manufacturers. Learned Counsel Ms. Shah submitted that what is being argued was exactly the grievance made by the respondents in the earlier petitions filed by them as petitioners. She submitted that the conduct of the petitioners are required to be considered. She pointedly referred to the papers including Para 29 of the order passed in Civil Application No. 7969 of 2013 in Spl. C.A. No. 7928 of 2011 and allied matters dated 5-9-2013 and submitted that it was the case of the petitioners therein that the importers are totally exempted from any kind of verification or test. Thereafter, the Court on examination of the papers passed some orders. She submitted that at that time the learned Advocate General appearing for some of the petitioners had made a statement that they are ready to submit the technical grade/material. However, subsequently, an application for modification/clarification came to be filed and what clarification they had sought was that the technical grade may not be insisted upon for every consignment. She pointedly referred to the order which is quoted about the physical verification of the technical grade/material and the specific statement that the consignment of the import may be tested and suitable conditions may be imposed. She emphasised the observations:

"..... He submitted that in any case he is ready to make a statement that actual physical sample of the technical grade/material for any such test for the purpose of import of formulations may be made. He also submitted that for every consignment of import which will be accompanied by such physical samples and suitable conditions may be imposed by the authorities which takes care of the apprehension about the safety of human life...."

12. Therefore, learned Counsel Ms. Shah submitted that what was sought to be clarified was that the technical grade/material may not be insisted with every consignment. However, the formulations which are imported were required to be tested and verified so that it matches with the technical grade/material. The Court has, therefore, passed the order:

"....Therefore, it is clarified, as suggested, that the technical grade/material may not be insisted upon with each consignment. Further, each consignment of formulation which are imported may be verified and tested so that it matches with the technical grade/material regarding specification and quality."

Learned Counsel Ms. Shah, therefore, submitted that the revised guidelines which are modified are only giving effect to the observations made by the Court in its order dated 5-9-2013 in Civil Application No. 7969 of 2013 in Spl.C.A. No. 7928 of 2011 and allied matters, where the main matters are pending. She, therefore, submitted that by modifying the interim relief permitting the import of such pesticides, on the contrary, the Court passed an order modifying the interim relief that subject to certain conditions, it could be imported. She further

submitted that again Misc. Civil Applications for clarification was filed to clarify that the technical grade/material may not be insisted for every consignment.

13. Learned Counsel Ms. Shah submitted that now what is sought to be achieved is that they are shying away from even testing of the samples of formulations which are imported, meaning thereby, the petitioners desire to get away with any kind of test which was the main grievance in the earlier round of litigation being Spl.C.A. No. 2530 of 2011 and allied matters filed by the petitioners therein. Learned Counsel Ms. Shah, therefore, submitted that this conduct, with the chain of events, is required to be considered that by such litigation one after another or the shift of stand what they desire is to wriggle out from the Courts. She submitted that the order passed in Civil Application No. 7969 of 2013 in Special Civil Application No. 7928 of 2011 and allied matters dated 5-9-2013 is not challenged or carried by way of appeal. In fact, subsequently, Misc. Civil Applications have been filed for modification or clarification and the Court has modified/clarified vide order dated 28-3-2014 that technical grade may not be insisted for every consignment. However, the formulations are required to be tested is maintained.

14. Therefore, instead of challenging the said order which is passed with almost consensus and which has not been carried in appeal, the present petitions have been filed to get out from the directions and observations of the Court and the compliance thereof in the guise of challenge to the modified guidelines issued by the respondent authorities. She emphasised that these modified guidelines are nothing but an effect given to the orders of this Court dated 5-9-2013 so that the rights and equalities are balanced till the final hearing of those matters. She submitted that when the earlier group of petitions are still pending and when the order passed by way of interim measure dated 5-9-2013 which has been modified/clarified again vide order dated 28-3-2014 are not challenged and in the guise of challenge to the modified guidelines the petitioners do not desire to comply with the earlier orders passed by the Court. Learned Counsel Ms. Shah submitted that they cannot be allowed to get out of such testing of the technical grade/material.

15. Learned Counsel Ms. Shah submitted that the submission that the testing of the sample of consignment at the port before it is cleared for marketing has a purpose to be achieved. She emphasized that if the sample is not taken and the goods are permitted to be cleared before the verification is made, it will reach in the market and to the ultimate consumers who are farmers and then there will not be any check and the very purpose of the Act as well as the orders of the Court will get frustrated. She submitted that pesticides are such material which are made to be used and it cannot be stored or retained, and therefore, once it is allowed to be cleared it will be difficult to have any check even if it is causing damage.

16. Learned Counsel Ms. Shah pointedly referred to the fresh guidelines and submitted that the Committee has considered the orders passed by the Court in

Civil Application No. 7969 of 2013 in Special Civil Application No. 7928 of 2011 and allied matters dated 5-9-2013 as well as on the Civil Applications for clarification filed by the petitioners herein (importers) and they have considered the rival claims when it has been specifically observed:

"As there are two parallel categories of formulations without registering technical, viz. for import and for indigenous manufacture, these guidelines shall be equally applicable to both the categories."

17. She has also referred to the provisions of the Act and submitted that the submission made by the learned Counsels that the Registration Committee is not empowered to frame the guidelines is misconceived. It was submitted that the Registration Committee is meant for implementing the provisions of the statute. She submitted that the reference made to the post-event check or test are not sufficient, and therefore, while considering the provisions as well as the observations made by the Court referring to human safety and bioefficacy such guidelines are sought to be modified or reconciled. Therefore, it is very much within the powers and ambit of the Committee under the statute. She pointedly referred to the provisions and submitted that the aspect of damage has been considered, and therefore, if such suitable measures are taken no grievance could be made and the petitioners cannot be heard to say that they are not liable for the test of any material which is imported. She submitted that the submission that there is no provision in the statute with regard to testing and what could be the consequence is also misconceived as, if the goods are spurious and not meeting the standards, the same can be deported, but it does not mean that it can be permitted to be imported without any test of the sample of formulations.

18. Learned Sr. Counsel Shri M.J. Thakore appearing for the petitioners in some of the petitions submitted that any such insistence for testing of the sample at the port before the goods could be cleared is violative of Art. 19(1)(g) of the Constitution. He submitted that the law does not provide or contemplate and any such measure which is not provided for in the law itself is bad. He emphasised that this kind of test is unreasonable restriction on the right of the petitioners to carry on trade or business violative of Art. 19(1)(g) of the Constitution of India. Learned Sr. Counsel Shri Thakore submitted that restriction can only be imposed by law made by the Legislature and there cannot be any such restriction on the right to carry on business without any such law made by the Legislature by way of any such guideline or regulation. He submitted that the petitioners cannot be compelled to give the sample at the port and await the result of the test of the sample before they can market the goods. He emphasised that if there is sale of the pesticides which is not approved or there is a shortcoming, then, as provided in the Act, the procedure could be followed by taking the samples and send it for testing and examination. Learned Sr. Counsel Shri Thakore submitted that like the Prevention of Food Adulteration Act or any other provision, the Insecticides Act itself provides for a mechanism or procedure that the law could be enforced by taking the samples and it could be examined and appropriate remedy is also

provided if the goods are found to be defective or inferior in quality. He submitted that as there is no such statutory provision in the law, the petitioners who are importers of the formulations cannot be compelled to give samples at the port for the test before clearance. He emphasised that the post-event testing which is also provided in the Act can take care of the public interest, and therefore, any such restriction or insistence to provide for a test of the formulation at the port before the goods are released for marketing is unreasonable restriction violative of Art. 19(1)(g).

19. Learned Sr. Counsel Shri Thakore has also referred to the scheme of the Act and submitted that Sec. 21 provides for the power of the Inspectors to visit and take the samples and send it for analysis. Sec. 21(2) provides for the seizure and Sec. 21(3) provides for exercise of power. Similarly, Sec. 22 provides for subsequent procedure to be followed by the Inspector after the goods are seized like the document like the registers, record, etc. could be seized and could be scrutinised. He emphasised that based on the report of the Analyst as provided in Sec. 24 further action could be taken including confiscation as provided in Sec. 25. He submitted that this procedure is envisaged by the Legislature, and therefore, any other procedure without any specific provision cannot be adopted which curtails the right of the persons like the petitioners who are importers of formulations. He has also referred to the Rules including Rule 17 and submitted that it provides for the packing of insecticides and clearly provides that it shall contain the minimum details which are required and the analysis and the details are required to be kept in the register to be maintained, and therefore, the procedure adopted by the respondent-Union of India and the authorities is arbitrary and illegal.

20. Learned Advocate Shri K.T. Dave appearing for the Union of India referred to the papers and the background with regard to the earlier petitions. He submitted that the petitions may not be entertained as earlier in the Special Civil Applications filed by the indigenous manufacturers the interim relief was granted. He submitted that at the instance of the present petitioners, the interim relief was vacated/modified, and thereafter, the clarification was made that the importers (petitioners) are not required to submit the technical grade/material with every consignment of formulation which is imported. He, therefore, submitted that now they are, therefore, estopped from raising such contention about the jurisdiction or the authority of the Registration Committee. He also referred to Rule 4 of the Rules and submitted that the Registration Committee is empowered to issue necessary instructions for implementation of the Act. He submitted that the guidelines are framed in furtherance of the object sought to be achieved. He also submitted that the petitioners have not raised any contentions with regard to the earlier guidelines and when they are sought to be modified to give effect to the directions of the Court vide order dated 5-9-2013 in Civil Application No. 7969 of 2013 and allied matters, they are now raising the contention about the jurisdiction or authority. He submitted that these guidelines are made applicable till the final policy is made by the Ministry.

21. He, therefore, submitted that the guidelines which were already in existence have been modified pursuant to the order of the High Court as stated above and no grievance could be made on the ground of unreasonable restriction. He emphasised and submitted that the directions of the High Court which are given in public interest to protect human safety, bioefficacy and environment cannot be questioned and they are estopped from raising any such contention in the present petitions. He also submitted that the samples which are taken at the port for the purpose of testing could be verified and tested within four weeks and there should not be any difficulty for compliance of the direction of the Court. He also submitted that reasonable restriction can always be placed by the authority to conform to the minimum standards of quality. He submitted that if the samples are not permitted to be taken at the port and the goods are cleared, then, virtually, the Act is not implemented qua the import of the formulations inasmuch as they are subsequently marketed through the channel of distributors etc. to the ultimate consumers/farmers. He also submitted that these formulations are used immediately, and therefore, it would be like meeting the *fait accompli* without any verification and the petitioners who are the importers will get away without any test conforming to the standards, meaning thereby, there is no application of the law to check their product/insecticides, which is not permissible. He, therefore, submitted that it is well accepted that reasonable restriction can always be placed in the public interest. He submitted that as observed in the earlier order by this Court, some mechanism has to be there even for implementation of the guidelines which takes care of the apprehensions about the damages or effects of such pesticides which are harmful on the human safety, bioefficacy, etc. He, therefore, submitted that the present petitions may not be entertained and the interim relief may be vacated. He has also stated that because of the interim relief the samples are not further processed and it could be tested within a short time as may be directed.

22. Learned Counsel Ms. Shah, in rejoinder, submitted and again emphasised with regard to the conduct to suggest that the petitioners are shying away from any kind of test to meet the required standards or norms. She emphasised that since only the formulations are imported, it could be from outside, and therefore, there is no data or technical grade available as it could be manufactured outside the country. She emphasised that the local manufacturers will be subject to scrutiny even during the process or manufacture or preparation of the formulations. They have to fulfil the norms whereas if such formulations which are permitted to be imported at the port are allowed to go in the market there is nothing which could be done even if the goods are spurious causing extreme damage to the human body and the environment. She, therefore, submitted that this kind of test is intended to protect and safeguard the minimum requirement of bioefficacy, human safety, environment and soil conservation, which is in consonance with the aim and object of the statute.

23. Learned Counsel Ms. Shah submitted that initially in earlier round of litigation when the petitioners therein who are local manufacturers had pointed out the

flaws in the Act and the procedure, the Court, while passing the order dated 5-9-2013 in Civil Application No. 7969 of 2013 in Spl.C.A. No. 7928 of 2011 and allied matters has considered the aspect of bioefficacy, human safety, soil conservation etc. and also the underlying object of the Act based on the international conventions which provide for lesser use of pesticides globally. She, therefore, submitted that after the order was passed dated 5-9-2013 vacating or modifying the interim relief at the instance of the present petitioners, they had stated and agreed for the test. However, subsequently, Misc. Civil Application No. 2483 of 2013 in Civil Application No. 8074 of 2013 in Spl.C.A. No. 2530 of 2011 and allied matters were filed praying that technical grade/material may not be insisted upon with every consignment of formulation which is imported to avoid certain practical difficulties and the order was passed by almost consensus. In other words, they had accepted for the test and only clarification was that the technical grade/material may not be insisted upon with every consignment which is imported. She again emphasised specific observations which has been found in the order passed while vacating the interim relief by this Court dated 5-9-2013, and thereafter, the order passed in the Misc. Civil Applications filed by the very petitioners for further clarification.

24. Therefore, learned Counsel Ms. Shah submitted that now they desire to get out of even the minimum test with the result that they get away with any kind of material without any test and there is total exemption from application of law to regulate the quality or the standards which has to be maintained and which has been discussed in the order of the Court while modifying the interim relief. Learned Counsel Ms. Shah, therefore, submitted that since the orders passed by this Court in the earlier round of litigation dated 5-9-2013 in the Civil Applications filed by the very petitioners for vacating the interim relief have not been carried further, and when they are sought to be implemented by the respondent-Union of India, now they cannot be heard to say by fresh petitions that the guidelines are violative of their rights. She strenuously submitted that the order passed in earlier round of litigation by this Court has been accepted by all including the present petitioners herein. Having accepted subject to the clarification in the review made by the petitioners themselves, now they cannot wriggle out of the compliance of that in the guise of challenge to the modified guidelines. She emphasised that otherwise it would amount to defiance of the Court's order which has been accepted by all since there is no appeal and in fact the review/clarification filed by the petitioners themselves has been accepted with almost consensus, and therefore, there cannot be now any grievance.

25. She submitted that in fact it is challenge to the order passed by this Court which has become final and the petitioners do not desire to comply with the orders of the Court by such litigation. Learned Counsel Ms. Shah, therefore, submitted that since the order in the earlier round of litigation has been accepted by one and all which is not a subject of appeal, even the present petitions are not maintainable in the guise of challenge to the modified guidelines. She emphasised that in fact the modified guidelines as it clearly states is only to give

effect to the order of the Court regarding compliance of the Court's order and which is accepted by one and all. Learned Counsel Ms. Shah, therefore, submitted that the submissions made by the learned Counsels on the ground of Art. 19(1)(g) may not be accepted as there are no unreasonable restrictions. She submitted that the right to carry on trade or business is always subject to reasonable restrictions and the Court having considered the commercial interest vis-?-vis public interest has made the observations while showing concern for the human safety, bioefficacy and environment.

26. Therefore, the submissions made by the learned Sr. Counsels referring to the scheme of the Act regarding the post-event procedure of the test and the steps which could be taken have no application in such cases of import of formulations where the authorities have no say or have no chance for any test that would be justified in taking samples at the port itself before the goods are cleared in public interest to safeguard the human safety, bioefficacy and environment. Therefore, she submitted that it cannot be said that there is any procedure contrary to the statute or beyond the scope of the statute. She pointedly referred to Rule 4 which provide for function of the Registration Committee which reads as under:

"4. Functions of Registration Committee:--The Registration Committee shall, in addition to the functions assigned to it by the Act, perform the following functions, namely:

(a) specify the precautions to be taken against poisoning through the use or handling of insecticides;

(b) carry out such other incidental or consequential matters necessary for carrying out the functions assigned to it under the Act or these Rules."

27. Learned Counsel Ms. Shah submitted that Rule 4(b) clearly empower the Committee to carry out any such incidental or consequential matters necessary for carrying out the functions assigned to the Registration Committee under the Act or the Rules. She submitted that every minute detail may not be provided in the main statute itself, and therefore, the delegated legislations have developed and provide for the details of the procedure or mechanism which has been evolved to give effect to the legislative intent. Therefore, it was submitted that if any such test is made in the public interest, the petitioners cannot shy away from any such test in the name of unreasonable restriction as otherwise they will get away without any test which will be dangerous. She submitted that if the imported material is not suitable and if there is no provision, it could be send back from the port itself, and therefore, any such submissions are misconceived.

28. In view of these rival submissions, it is required to be considered whether these petitions could be entertained and the challenge to the modified guidelines (fresh guidelines) purported to have been issued or made after the order passed by this Court in Civil Application No. 7969 of 2013 in Spl.C.A. No. 7928 of 2011 and allied matters dated 5-9-2013 could be sustained.

29. As could be seen from the broad facts which have been highlighted and discussed while making the submissions, a reference is made to the issue relating to manufacture and use of pesticides whether it is manufactured indigenously or it is imported from outside. In earlier round of litigation the indigenous manufacturers have raised the issues with regard to the manner and method of registration of technical grade and formulation, testing and the functions of the Registration Committee. The focus was that when the formulations or the pesticides are imported, the technical grade/material is given a go-by and practically exemption has been given by the Registration Committee from any scrutiny when such pesticides are imported by the importers. The material would be manufactured in some other country, and therefore, there may not be any kind of test or scrutiny as provided in the Act in India. The petitioners in earlier round of litigation who are the local manufacturers of pesticides have, therefore, made a grievance with regard to discrimination and difference in the treatment including even the aspect of scrutiny and the standards of scrutiny adopted in respect of their goods which are manufactured locally and such goods (pesticides) which are imported from outside by the importers like the petitioners herein. The emphasis was mainly on the technical grade/material that it is not available which is most essential and without technical grade/material there could not be proper scrutiny coupled with the fact about deemed registration granted by the Registration Committee giving a certain monopoly for a limited period to such importers of pesticides or formulations.

30. The indigenous manufacturers had contended that their process is subject to scrutiny at every stage including during the process of manufacture whereas ready-made material which is imported from outside is exempted from any such test upto that stage, and thereafter, if it is not tested there will be serious compromise with the human safety, bioefficacy and environment. Therefore, the Court passed the order in the earlier round of litigation vacating/modifying the interim relief with a detailed order making it clear that the Court has to address the public interest apart from the rival commercial interest or conflicting interest of both the sides. While focusing on the aspect of human safety, bioefficacy, environment and soil conservation, the Court had referred to the background as well as the international conventions or treaty which has a reference to the effect of pesticides on human life, bioefficacy and environment. Referring to the international conventions and the studies which have been made on extensive research the Food & Agriculture Organization of the United Nations has referred to the fact that 95 countries have agreed to a new International Convention on dangerous chemicals and pesticides. It records,--

"The aim of the Convention is to enable importing countries to decide what chemicals they want to receive and to keep out the ones they cannot manage safely."

It was recorded in the earlier order that the companies in the Western Europe are currently the world's largest chemical producers and the fastest growing

markets are in developing countries, particularly in Latin America and Asia. The implications of the International Conventions like Basel Convention, Rotterdam Convention and Stockholm Convention have to be considered vis-?-vis the provisions of W.T.O. and the regulation or mechanism for regulation like Prior Informed Consent Procedure advocated in Rotterdam Convention. Therefore, whether the pesticides which are sought to be imported has been following this procedure in India is required to be considered by the Union of India.

(Emphasis supplied).

31. It is in this background the Court had observed referring to the scheme of the Act, particularly Sec. 9(3B) and other statutory provisions that the Insecticides Act has been intended to have some kind of regulation on use of pesticides or import of pesticides which cannot be altogether avoided. Some mechanism has to be provided by which the laws are implemented with more effectiveness and transparency. Therefore, considering the rival submissions and taking a note of the apprehension about human safety, bioefficacy and environment, it was observed that the Union of India or the concerned administrative department may consider the requirement of imports in India for future and it was made very clear that the Court is concerned with the aspect of safety of human and animal life, bioefficacy and environmental effects. It was observed:

"44. The Court is constrained to observe that the standard of purities or qualities have sometimes a difference when it comes to the advanced Western countries and countries of the third world like in case of Coco-Cola. The Union of India has to be alive and sensitive to this aspect while considering the import of such pesticides even though the importation of such formulations may be beneficial and useful for Indian agriculture. In other words, there has to be sufficient safeguards with regard to the minimum standards of safety.

45. Therefore, the larger issues involved in these petitions with regard to human safety, bioefficacy, interests of multinationals vis-?-vis indigenous manufactures as well as the criteria or standard of impurities, whether the molecule is considered a new one which is registered 15 years back in other parts of the world etc. can be considered at the time of final hearing. It may also have to be considered on a larger canvas with reference to the International Conventions or Treaties which provide for lesser use of such harmful pesticides and also where it has been stated that organic farming is better than indiscriminate use of such pesticides. The Court may consider the rival claims or balance the rival claims that in spite of such limitations, to what extent it is necessary to import permitting the use thereof for agriculture. Again, it will require research and study to have complete data for the pros and cons of use of such pesticides and what should be the approach which may be considered by the respondent-Union of India while considering the commercial interests as well as the interest of human safety and bioefficacy."

32. Thus, the directions were given in Para 47 and the interim relief in the petitions filed by the indigenous manufacturers was modified at the instance of the present petitioners (importers) who were the respondents therein and it has been observed and directed that the interim relief is modified subject to the condition that--

"(a) even in case of import of formulations the technical grade/material will be tested and actual physical sample of such technical grade of each consignment when it is imported will have to be provided by the importer which will be subjected to all the rigours of the tests applicable to the indigenous manufacturer like the examination of chemical composition, test with regard to bioefficacy and human safety as well as its probable effect on the soil and human life;

(b) the guidelines may be made more transparent as well as more effective so as to provide equal treatment to the indigenous manufacturers as well as the importers who are importing such pesticides manufactured outside India.

(c) the procedure evolved by the Registration Committee for grant of deemed registration cannot be sustained as discussed above and, therefore, no further "deemed registration" may be granted till the matters are finally heard or appropriate guidelines are issued by the Government of India."

33. It is in this background, in the 347th Meeting of the Registration Committee, referring to this very aspect and the order of the Court, it has come out with some modifications which is a subject-matter of challenge in the present petitions filed by the petitioners who are the importers. The main emphasis or challenge is to clause (iv) of the guidelines which has been referred to by both the sides at Annexure-II at Page 55 in the petition which provide,--

"(iv) A condition that "sample of every consignment of formulations, so registered, shall be drawn at the port or the manufacturing premises, as the case may be, subjected to tests of quality before its distribution or sale" shall be stipulated in its Certificate of Registration. This condition shall also apply to all such formulations which have been registered under this category and their technical has not been registered so far."

This clause is the bone of contention for which grievance has been made by the petitioners who are the importers on the ground of unreasonable restriction on their right to carry on trade or business under Art. 19(1)(g) of the Constitution of India.

34. The background as referred to hereinabove, therefore, has to be considered with the conduct of the petitioners which has also been worth noting. The petition filed by the indigenous manufacturers in earlier round of litigation where the interim relief is granted in their favour is modified at the instance of the present petitioners (importers) in the Civil Applications filed by them subject to the conditions as stated above. Again, Misc. Civil Applications for review/clarification is filed by them seeking clarification that technical grade/material

may not be insisted with every consignment which is imported though they made it expressly clear that the goods could be tested and verified or scrutinized so that it adheres to some minimum standards of purity, quality or permissible criteria of human safety, bioefficacy and environment. The order was passed almost by consensus as highlighted and emphasised by learned Counsel Ms. Shah. It is required to be noted again that in the order passed below the Civil Applications for modification/clarification at the instance of these very petitioners in earlier round of litigation, it is specifically recorded and quoted,--

".....He submitted that in any case he is ready to make a statement that actual physical sample of the technical grade/material for any such test for the purpose of import of formulation may be made. He also submitted that for every consignment of import which will be accompanied by such physical samples and suitable conditions may be imposed by the authorities which takes care of the apprehension about the safety of human life....."

However, a request was made that the word "every consignment" may be clarified that technical grade/material may not be insisted upon with the consignment of formulation, and therefore, the Court accepted their request and passed the order:

"In view of the submissions made, the focus is regarding the technical grade/material which may not be insisted for each consignment once such technical grade/material has been supplied for the purpose of analysis and scrutiny prior to the registration. Therefore, it is clarified, as suggested, that the technical grade/material may not be insisted upon with each consignment. Further, each consignment of formulation which are imported may be verified and tested so that it matches with the technical grade/material regarding specification and quality."

(Emphasis supplied)

35. Thus, it is accepted readily with open eyes and in fact the Court has recorded based on which the Registration Committee, in compliance with the order of this Court, has made the modifications in the guidelines which are now sought to be challenged only to wriggle out of the compliance with the orders/direction in the name of challenge to the guidelines. The authority of the Registration Committee is challenged to have any such modification or guidelines without challenging the order of the Court itself which has been accepted by the petitioners themselves with the clarifications suggested and accepted by them. It not only reflects the attitude to protect their commercial interest but it also reflects the regard which they have for the system and the concern for vital issues of human safety, bioefficacy and environment.

36. It is in this background, while examining the contentions which have been raised referring to the fundamental rights and the restrictions which are sought to be made calling them unreasonable restrictions, which are required to be considered. Therefore, the moot question is whether any such provision made by

the authority under the statute while implementing the provision of the statute, can it be said that it is unreasonable restriction, particularly when it is the concern shown with regard to human safety, bioefficacy and environment? At the cost of repetition, it is required to be noted, referring to the earlier round of litigation, that the interim relief has been modified by the Court at the instance of these very petitioners subject to the conditions which they have well accepted. Again, they had suggested for a clarification so that the technical grade/material may not be insisted for every consignment which was also considered and accepted and still they want to wriggle out of the directions of the Court regarding the test of the sample of formulations raising such issues about the authority of the Registration Committee and also on the ground of unreasonable restriction.

37. The issue is whether any such contention can at all be permitted to be raised in this manner apart from the merits of the case. In fact, it is like a cock and bull story where the petitioners desire to have the advantage at any cost for their commercial interest. Having accepted the modification of the interim relief at their instance subject to the conditions which have been subsequently clarified at their instance taking note of the practical difficulties, they are now raising other issues only to wriggle out of the test or scrutiny of their material. Thus, it is like claiming total exemption from any kind of test or application of law of the sovereign country, like the Act, that it should not be applicable and whatever the material/formulation is imported has to go free in the market without any verification.

38. Again, much emphasis given on the aspect of post-event test, the procedure and the mechanism provided in the Act read with the Rules with regard to taking sample, testing and analysing the same, and thereafter, if it is found not conforming to the standards suitable measures could be taken etc. are tried to be suggested to let them have the market flooded with the formulations/material which are imported without the minimum test or scrutiny. It is required to be mentioned that the purpose and the object of the Act is to prevent and/or minimise the damage rather than punishment. Therefore, the emphasis on the post-event procedure to submit that sufficient provision is made is misconceived as it would have met the *fait accompli*. If this argument is accepted, it would run against the public interest like human safety, bioefficacy etc. inasmuch as if such materials are allowed to be marketed, it will reach the ultimate consumer like the farmers and it would be used which will have an irreversible situation qua the damage and nothing could be done. Thus, it is like suggesting to apply lock to the stable after the horses have run away.

39. Therefore, the Court will always have to consider the underlying object and purpose of the Act coupled with the fact about the realities existing in a given situation to see that the provisions of the statute are not subverted or are not kept as a dead letter in the statute without any meaning. If the underlying purpose and the object of the Act coupled with the International Conventions

which have been advocating and cautioning the harmfulness of these pesticides with the suggestion that the use should be minimised and regulated are considered, the submissions which have been made referring to Art. 19(1)(g) about unreasonable restriction are thoroughly misconceived.

40. The Registration Committee which is a creature of the Act has been provided with certain functions as provided in the statute itself and Rule 4 refers to the functions of the Committee. Rule 4(b) refers to the handling of the pesticides and while performing its functions it can, therefore, carry out such other incidental and consequential matters for carrying out its functions under the Act or the Rules. Therefore, the guidelines as existed which has been suitably modified to give effect to the directions of this Court as stated above cannot be said to be without any authority or jurisdiction as sought to be canvassed. Therefore, apart from the contentions based on reasonable restriction and the right to carry on the trade under Art. 19(1)(g) as discussed, the contentions with regard to the authority or jurisdiction of the Committee to frame any such guideline is also required to be considered. As stated above, the functions of the Registration Committee is expressly provided by Rule 4 to carry out incidental or consequential matters for the purpose of the Act, and therefore, the Committee is within its rights to make such guidelines which would be ultimately made a policy by the Government or the concerned Ministry following the Rules of procedure. However, that does not mean that there is no guideline and if there is no guideline, rule or provision in the statute itself, the petitioners are not subjected to any law or any kind of regulation. Again, it is well accepted that every minute detail may not be provided in the statute or the Act itself, and therefore, the concept of delegated legislation has been evolved in the form of rules, regulations, and guidelines. It lays down procedure or the manner of the details giving effect to the provision of the statute.

41. Therefore, the submission made by learned Sr. Counsel Shri Thakore that unless there is a law made by the Legislature there cannot be any restriction put on the right to carry on trade or business by any such guidelines or rules is misconceived. It is well accepted that in many cases the Courts have come across guidelines or rules or regulations by which, while dealing with particular issues, the norms have been laid down which are challenged on the ground of Arts. 14 and 19(1)(g) which lays down unreasonable restrictions or it is discriminatory. Therefore, it is not total lack of jurisdiction or authority but rather it is a matter of scrutiny in a given case with regard to the grievance made in each individual case vis-à-vis the respective guidelines or the rules or regulations.

42. In the facts of the case, the learned Counsels have not been able to point out how in which manner the guidelines can be said to be contrary to or in conflict with any statutory provisions of the Act or the Rules. In fact, it is in furtherance or giving effect to the statutory provision it has been framed or rather on judicial scrutiny in earlier round of litigation, the Court has made the observations and issued directions and guidelines which are now modified to give effect to the

orders of the Court. Therefore, the submissions made by the learned Sr. Counsels for the petitioners on both the counts that such a test is unreasonable restriction on their right to carry on trade or business under Art. 19(1)(g) or that the Registration Committee has no such power or authority is misconceived and cannot be accepted.

43. Again, taking note of this conduct the petitioners would be estopped from raising any such contentions having failed to raise any such contentions. The principles of issue estoppel is very well accepted that when a party has not raised an issue when it had the occasion and opportunity to raise such an issue which it has not raised or given up, it will be deemed to have given up, and therefore, cannot be raised subsequently. In the facts of the case, in the earlier round of litigation, when the petitioners have not made an effort or rather successfully having got the interim relief vacated at their instance and suitably modified with consensus at their instance, now cannot be permitted to challenge any such guidelines or procedure which has been adopted in compliance with the orders of the Court without challenging the order of the Court itself. Rather it is in compliance of the orders of the Court like the order dated 5-9-2013 in Civil Application No. 7969 of 2013 in Spl. C.A. No. 7928 of 2011 and allied matters (earlier round of litigation), and therefore, they are estopped from raising such contentions by way of these fresh petitions.

44. One more aspect assuming that there is some snag in the rules or procedure like the guidelines in the present case, the Court in public interest has issued proper instructions till such rules or guidelines are framed or some mechanism is evolved. A useful reference can be made to the observations made by the Hon'ble Apex Court in the case of Vishaka and others Vs. State of Rajasthan and Others, , wherein it has been observed referring to International Conventions and norms with regard to gender equality that such International Conventions not inconsistent with the fundamental rights and in harmony with the spirit must be so ready to protect the objects of the constitutional guarantees. In other words, in the absence of any such law or the rules for effective measures to check the evils like in the present case the harmful effects of pesticides, suitable guidelines can be issued which have been framed and the submissions made by learned Sr. Counsel Shri Thakore that the guidelines are not valid and are beyond the authority of the Registration Committee, and therefore, there is no provision in the statute are misconceived. In any event, the Court has, therefore, passed appropriate directions which have been given effect to in the modified guidelines. Therefore, there is no merit in the submissions advanced by the learned Sr. Counsels on behalf of the petitioners.

45. Therefore, the petitions filed by the present petitioners cannot be entertained and deserve to be dismissed and accordingly stand dismissed. Interim relief shall stand vacated forthwith. In respect of the formulations which are imported and lying at the port for which the samples have been taken are ordered to be tested or verified within a period of three weeks so that they may not have any adverse

effect to the petitioners and thereby the commercial interest of the petitioners can also be protected. Rule is discharged in each petition. Civil Application Nos. 7112 to 7116 of 2014 filed by the applicants are accordingly allowed. No order as to costs.

The Registry is directed to keep a copy of the order in each of the matters.