

(2013) 09 GUJ CK 0058
In the Gujarat High Court

Case No : Civil Application (for vacating interim relief) No. 7969 of 2013 in Special Civil Application No. 7928 of 2011 with Civil Application Nos. 8064, 8066, 8068, 8070, 8072, 8074, 8077, 8095, 8097, 8099 and 8101 of 2013 in SCA Nos. 7928 and 2530 of 2011

Crop Life India

APPELLANT

Vs

Super Industries

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2014) 303 ELT 177

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Judgement

Rajesh H Shukla, J.—Rule. Service of rule is waived by learned Advocate Ms. Manisha Lavukuar, learned Advocate Shri Shakeel Qureshi and learned Advocate Shri V.H. Kanara for the respective respondents. The present Civil Applications have been filed by the applicants-original respondents in their respective petitions for vacating interim relief on the grounds stated in the applications, inter alia, that the allegations of the petitioners that the technical material is not registered or evaluated for import of formulation is factually incorrect. It is contended that a wrong impression is sought to be created that registration of the technical grade/material is given a go-bye while importing the formulation and hence exemption has been given to the respondents herein by the Registration Committee. It is also contended that in this manner compromise is made to the safety and needs of human life as well as agriculture as the technical grade/material is not scrutinized or tested. It is also contended that by resorting to "deemed registration" by the Registration Committee, a novel way is found out to create monopoly in favour of the respondents for a period of three years. Further, contentions have also been made referring to the minutes of the 282nd meeting of the Registration Committee dated 22-11-2007, 284th meeting held on 13-12-2007 and 313th meeting dated 8-11-2010 that in a way the importers who are the respondents, applicants herein, are treated differently

than the indigenous manufacturers-original petitioners and therefore there is a discrimination in treatment meted out to the petitioners violating Art. 14 of the Constitution of India, which has led to filing of the petitions and grant of interim relief.

2. Heard learned Advocate General and Sr. Counsel Shri Kamal Trivedi appearing for M/s. Nanavati Associates for some of the applicants. He has referred to the background of the facts and submitted that the ground on which interim relief is granted is not made out and the factual background is totally incorrect. Learned Advocate General Shri Trivedi referred to the grounds and submitted that the first contention raised that exemption is granted to the importers like the applicants herein, original respondents, from registration of the technical material (grade) is totally non-existent. Learned Advocate General Shri Kamal Trivedi submitted that no exemption is granted. He referred to the scheme of the Insecticides Act, 1968 (hereinafter referred to as "the Act") and submitted that considering the importance of new formulations and to promote agriculture, the Act has been enacted and guidelines have been made as well as the Registration Committee, as provided under the statute, has been constituted which looks after the aspect of registration". He submitted that the applicants, as importers, are only importing the formulations for which the applicants have sought the registration of the formulations and not registration of the technical grade/material.

3. Learned Advocate General and Sr. Counsel Shri Trivedi referred to Section 9(1) and Section 9(3) of the Act and submitted that a procedure has been laid down which is required to be followed if the importer wants to import and is required to not only register the formulations but it is also required to submit the technical grade. He referred to Section 3(e) of the Act which defines "insecticides" and submitted that as provided, a substance may be a substance specified in the Schedule and may include both the formulation as well as the technical grade or material. He submitted that the formulation would be a substance or a preparation with one or more such substance where the basic material is refined or diluted. He submitted that when the applicants-original respondents are not importing the technical material/grade and are only importing the formulations, there is no need for compulsory registration of the technical grade/material as sought to be canvassed. Learned Advocate General and Sr. Counsel Shri Trivedi pointedly referred to the prayer clause and submitted that there is a catch by which the registration of the applicants-original respondents is sought for the technical grade on the basis of which persons like the original petitioners who are indigenous manufacturers can claim the benefit of registration of technical grade/material on the basis of the provisions of the Act, particularly Section 9(4) which is considered as "Me Too" registration.

4. Learned Advocate General and Sr. Counsel Shri Trivedi referred to Section 9(1) and Section 9(3) of the Act and submitted that it refers to registration of the insecticides and the procedure which is required to be followed and it takes care

and the Committee, which has been constituted would make an inquiry and after satisfying itself with the effect of the pesticide and its safety to human beings and animals, shall register the formulation. He, therefore, submitted that the submissions regarding any exemption are misconceived. He referred to the minutes of the 313th Meeting (special) of the Registration Committee dated 8-11-2010 produced at Annexure-D and emphasized that it has been specifically provided,

The committee deliberated on the merits and demerits of the policy of registration of products i.e. formulation of imports without registering the technical grade and examined the issue purely in the context of the needs of Indian agriculture and environmental safety and recommends that "Formulation import without registration of technical be continued for new molecules based on the requirements of the country with regard to the situation of pests, diseases and weeds etc.

5. Learned Advocate General and Sr. Counsel Shri Trivedi submitted that as recorded in this meeting, the policy is intended to encourage new, safe and easier formulations which can be made available to the Indian farmers. He also referred to the aspect of the benefit which the indigenous manufactures will get without spending on research u/s 9(4) of the Act. He emphasized the registration requirement for "Me Too".

6. Learned Advocate General and Sr. Counsel Shri Trivedi referred to the order of the High Court (Coram : Anant S. Dave, J.) dated 11-7-2013 and submitted that the factual background is not correctly placed before the Court and he also referred to the guidelines and submitted that the same procedure for registration of formulation is provided and followed qua the importer as well as the indigenous manufacturer. He submitted that even the importer for the purpose of import of formulation is required to submit the technical grade/material with the actual physical sample which will be scrutinized, verified and tested by the Central Insecticides Laboratory which, in turn, will be scrutinized by the Registration Committee and therefore the grounds or the premises which have been made out for grant of interim relief do not exist. He therefore submitted that the interim relief may be vacated.

7. Learned Sr. Counsel Shri Mihir Thakore appearing for M/s. Nanavati Associates for some of the applicants referred to the Act and submitted that the Act does not contemplate registration of the technical grade/material for the purpose of import of formulations. He submitted that, however, as it has been the procedure which has been followed, the importers, the applicants herein, are required to submit even the technical grade/material for the purpose of verification at the time of import of formulations which in turn will be tested and scrutinized in a scientific manner with appropriate material, and if there is any difference, a clarification could be sought from the applicants. He therefore submitted that the submissions made by the original petitioners with regard to any exemption or the fact that the importers like the applicants are permitted to import the

formulations without any technical grade verification and are granted exemption, whereas the indigenous manufactures are required to undergo rigorous test for the purpose of formulations as well as the technical grade is misconceived. He emphasized that the procedure as envisaged in the Act read with the Rules are uniformly applicable to the importers as well as the indigenous manufacturers. He submitted that therefore the contention that the importers like the applicants are exempted from necessary test or scrutiny with regard to the effect of the pesticides and its safety to human beings and animals are sufficiently taken care.

8. Learned Sr. Counsel Shri Thakore submitted that, as a matter of fact, indigenous manufacturers get the advantage of "Me Too" registration as provided in Section 9(4) of the Act after the new molecule is permitted to be imported and once the technical grade of the new molecule is registered, the indigenous manufacturers also are entitled for such registration without undergoing the rigours of the procedure for the data and bioefficacy. He therefore submitted that in fact such import is permitted with a view to assist the Indian agriculture and farmers by making available new molecules as well as technical grade. He submitted that as provided in detail in the minutes of meeting of the Registration Committee, new molecules are also specified as to what would be considered or treated as new molecules.

9. He also referred to the guidelines for registration of pesticides u/s 9(3) and Section 9(3B) as on 5-10-2011 produced at Annexure-E (colly.) and emphasized that it considers both the import of formulation u/s 9(3) like the case of the applicants and the case of the indigenous manufacturers. He submitted that "deemed registration" has been evolved by the Committee as the data is required to be examined with reference to the effect of the use of such pesticides over a period of time in two or more seasons or years on the basis of data which is generated for agro-climatic conditions. Learned Sr. Counsel Shri Thakore therefore submitted that the ground for the alleged discrimination is also without any substance.

10. Learned Sr. Counsel Shri Thakore referred to the two letters/correspondence of the Pesticides Association of India and one of them is the petitioner. He tried to submit that the contentions raised is without any substance as it is clearly referred to in this letter that it will go a long way towards bringing new technology to the country for the overall benefit of Indian farming. He submitted that, therefore, broadly even the Association had conceded for three years duration to avail the benefit u/s 9(4) of the Act. Therefore, learned Sr. Counsel Shri Thakore submitted that the petitioners cannot make a grievance and the interim relief may be vacated as, otherwise, it would affect the applicants, the original respondents.

11. Learned Sr. Counsel Shri Mihir Joshi appearing for some of the applicants supplemented the submissions made by learned Advocate General Shri Trivedi as well as learned Sr. Counsel Shri Mihir Thakore and submitted that the main two aspects which have been focused are safety measures and discrimination. He

submitted that it is sought to be contended that indigenous manufacturers are not treated on equal footing and the importers are having the benefit of the guidelines which are made to favour them. However, he submitted that the procedure provided which has been referred to is the same. He emphasized the definition of "insecticide" as provided in Section 3(e) of the Act and submitted that it provides for both the formulation as well as the technical grade. Therefore, learned Sr. Counsel Shri Joshi submitted that most of the data is provided even for technical grade and the use test may not be available as during the period when it is used, the data could be generated and therefore it could not be a ground to claim discrimination. He emphasized that there is no discrimination. He also referred to the affidavit of the Government to support his submissions. He has also referred to the guidelines and the Statement of Objects and Reasons of the Act. Learned Sr. Counsel Shri Joshi referred to the judgment of the Hon'ble Apex Court in the case of Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Another, , and submitted that as it is a matter of policy decision, normally, the court would not exercise the discretion.

12. Shri Tushar Mehta, learned Addl. Advocate General and Sr. Counsel, appearing with learned advocate Ms. Manisha Lavkumar for respondents Nos. 1-15, the original petitioners, referred to the scheme of the Act and submitted that the issue involved in the present petitions is whether "deemed registration", which is sought to be granted, is in conformity with the Act or it is contrary to the provisions of the Act. He referred to the scheme and the background of the facts and submitted that the petitioners are indigenous manufacturers of pesticides who are sought to be discriminated by the deliberate and collusive guidelines framed by the respondent-Union of India and the Registration Committee which in turn will help the respondents multinational companies, the applicants herein, to create a monopoly for a period of three years which could be demonstrated.

13. Learned Addl. Advocate General and Sr. Counsel Shri Mehta referred to the definition of "insecticides" as provided in Section 3(e) of the Act and submitted that the formulation and technical grade are also "insecticides". He also referred to the provisions of Section 3(k) which provide, "misbranded" and referred to clause (vi) and submitted that it provides that an insecticide shall be deemed to be misbranded if it is not registered in the manner required by the Act. Learned Addl. Advocate General and Sr. Counsel Shri Mehta referred to Section 9 of the Act which provides for registration of the insecticides with Rule 6 of the Insecticides Rules, 1971 (hereinafter referred to as "the Rules"). He submitted that Chapter III Rule 6 provides about the manner of registration and Rule 6(b) provides for the powers of inspection by the committee. He referred to definition Rule 2(q) "testing facility" and submitted that all these provisions read with Section 9 clearly provide that there is a catch by which the respondents, who are the importers of the formulations, are given exemption from such rigours of the procedural test verification. He emphasized that as an importer he is not required to get technical grade/material registered and the formulation would be

registered on the basis of whatever material is submitted. He submitted that the indigenous manufacturer will be subject to inspection, the test and he will have to see that even the technical grade conforms to the standards. Then only his formulation could be registered.

14. Learned Addl. Advocate General and Sr. Counsel Shri Mehta further referred to the scheme of the Act and submitted that Section 9(3) refers to the registration of insecticides and it provides for the examination of efficacy of insecticides and safety of human being and animals which is verified only on the basis of papers submitted by the importer as the technical grade could be at the premises or the factory located outside the country and therefore there will not be any test or examination, whereas the indigenous manufacturer is subjected to such test or verification.

15. Learned Addl. Advocate General and Sr. Counsel Shri Mehta referred to Section 9(4) of the Act and submitted that it provides for "Me Too" registration, meaning thereby, when the registration is granted to an importer, the other manufacturers engaged in the business of manufacturing can make an application for grant of registration certificate on the same condition on which the insecticide has been originally registered. However, learned Addl. Advocate General and Sr. Counsel Shri Mehta submitted that the catch is that it would be possible only after the period of 3 years as the guidelines have been devised by the Registration Committee so as to provide that "deemed registration" is granted to such manufacturers who will be granted registration after 3 years. He submitted that in other words the indigenous manufacturer cannot apply for registration on the basis of the provision of Section 9(4) during this period of 3 years as the deemed registration is granted in favour of the importer and it will deprive the indigenous manufacturer of the right of registration for a period of 3 years creating a monopoly in favour of such importer during such period.

16. He, therefore, submitted that when the Act does not provide for any "deemed registration", the Registration Committee by way of a guideline cannot create such deemed registration which is contrary to the statutory provisions of the Act or the Rules made thereunder. He emphasized and submitted that the Registration Committee as referred to in Section 5 of the Act is constituted as per Section 5 of the Act and when such a committee is constituted by the statute, it will be subject to the statutory limitations of the statute or the Act and cannot override the statutory procedure or the provision or the rule. Learned Addl. Advocate General Shri Mehta submitted that Section 5(5) of the Act provides that the Committee shall regulate its own procedure for the purpose of conducting the business. It has not necessarily empowered such Committee to create such provision of "deemed registration" which is not provided by the statute. He submitted that this provision is only to allow the Committee to regulate its procedure in transacting its business, but does not empower to grant such "deemed registration" de hors or contrary to the statutory provisions of the Act.

17. Learned Addl. Advocate General and Sr. Counsel Shri Mehta also referred to

the minutes of the 313th Meeting (Special) of the Registration Committee dated 8-11-2010 (Annexure-D) and referred to the tables with regard to the recommendation and the decisions taken to highlight and support his submission with regard to discrimination and submitted that it is an indirect way of allowing the committee to do something which is not contemplated in the Act or the statute. Learned Addl. Advocate General and Sr. Counsel Shri Mehta submitted that not only such a provision and the method creates monopoly, but it affects the national interest and the interests of the Indian farmers. He emphasized that it should not be confined to a limited issue but should be considered on a broader perspective for the interests of the Indian manufacturers and Indian farmers. He pointedly referred to Section 9(3), 9(3B) and 9(4) of the Act. He also referred to the guidelines of the Registration Committee framed earlier in the year 2007 in its 284th Meeting dated 13-2-2007. He also referred to the subsequent meeting of the Registration Committee, i.e., 313th Meeting (special) dated 8-11-2010 and submitted that the criteria have been relaxed. However, he submitted that it was only after the notice was issued by the High Court these aspects have been considered and therefore he emphasized that the sequence of events and the dates may also be relevant. Learned Addl. Advocate General and Sr. Counsel Shri Mehta submitted that there is no provision in the statute providing for "deemed registration" which is sought to be now evolved by the Registration Committee and therefore it is contrary to law.

18. Again, learned Addl. Advocate General and Sr. Counsel Shri Mehta referred to the minutes of the 313th Meeting (special) of the Registration Committee dated 8-11-2010 produced at Annexure-D. He also referred to the affidavit-in-reply filed by the respondent Union of India as well as the other respondents and submitted that as stated the policy is to encourage the new molecules. However, it is also required to be considered whether it is genuinely new molecules which are permitted or outdated old molecules which are sought to be imported. He emphasized that the fact that what would be the new molecules has also been considered and it is provided that if it is more than 15 years then it cannot be termed as new molecules which itself suggests that the period of 15 years has been considered so as to permit any such molecules to be dumped and there are no denial to many such averments. He referred to the recommendations of Dr. C.D. Mayee Committee and also the representation made by one of the petitioner associations dated 29-9-2010. He submitted that the underlying scheme of the Act is to protect the national interest and the interests of Indian farmers and agriculture and encourage new and safe molecules. He again emphasized that the molecules which are old enough (more than 15 years) cannot be termed as new molecules in these days of scientific advancement and innovative research.

19. Learned Addl. Advocate General and Sr. Counsel Shri Mehta pointedly referred to the affidavit-in-rejoinder in detail and submitted that the underlying object of the Act to grant protection to the Indian farmers and agriculture as well as environmental safety and promote import of new formulations is not fulfilled by the methods of the Registration Committee and in fact it is adopting the

methods which are contrary to the spirit of the legislative intent and the Act. Learned Addl. Advocate General and Sr. Counsel Shri Mehta therefore submitted that the Registration Committee is a creature of the Act. Its function is confined to the specific work and cannot expand or assume the jurisdiction which is not provided by the statute itself. He therefore submitted that there are no powers vested with the Registration Committee to provide for any "deemed registration" by evolving any such method or guidelines. He submitted that what cannot be done directly cannot be permitted to be done indirectly. He submitted that the minutes of the 313th Meeting of the Registration Committee (special) held on 8-11-2010 produced at Annexure-D creates only a camouflage and in connivance with the multinationals a guideline or a device is made to grant them a monopoly at the cost of the Indian farmers and agriculture.

20. He again referred to Annexure-G which is a representation dated 11-7-2006 made to the Ministry of Agriculture, Govt. of India, with much detailed focus on such aspects and submitted that it was followed by another representation dated 3-10-2006 which has not been considered. He also referred to Annexure-J and submitted that the authorities will not have a chance to have any test with regard to the technical grade/material inasmuch as it is outside the country and they have no access for inspection of such technical grade/material. He submitted that whatever is stated and produced would be accepted and therefore the quality and safety would be compromised.

21. Learned Asst. Solicitor General of India Shri P.S. Champaneri appearing for the Union of India referred to the scheme of the Act and referred to the definition of "insecticide" provided in Section 3(e) and submitted that it would include both the formulation and the technical grade. He referred to Section 5 which provides for the Registration Committee and how it is constituted and the board which is appointed. However, he emphasized Section 5(5) and submitted that the Registration Committee can regulate its own procedure for the registration and it is required to be considered for the purpose of considering the guidelines with regard to "deemed registration." Learned Asst. Solicitor General of India Shri P.S. Champaneri also referred to Section 36 read with Rule 41 with regard to the power of the Central Government and submitted that the Government is conscious and therefore Section 17 provides for prohibition of import of certain pesticides. He also referred to Section 27 for the public safety. Learned Asst. Solicitor General Shri PS Champaneri referred to Section 11 and submitted that the power of revision of the Central Government has been provided and if any person is aggrieved can avail alternative remedy as provided in the statute against any such grant of "deemed registration".

22. Learned Asst. Solicitor General Shri Champaneri referred to Section 9 of the Act which provides for registration of insecticides and submitted that the procedure is laid down that in an application for registration of insecticides, the Registration Committee may satisfy itself that the insecticide to which the application relates conforms to the claims made by the importer or manufacturer

and thereafter such registration is made.

23. He referred to the proviso and submitted that the aspect of safety to the human beings or animals has also been considered when it is provided that the registration may be refused in a given case. Learned Asst. Solicitor General Shri Champaneri submitted that Section (3B) provides for provisional registration for a period of two years. He submitted that this period of two years is for the purpose of testing the data or the possible effects and bioefficacy. He referred to Section 9(4) and submitted that it starts with a non obstante clause and it refers to the right of the application as "Me Too" application. He submitted that when a person is aggrieved, Section 10 provides for an appeal against the decision of the Registration Committee and Section 11 provides for the revision. He, therefore, submitted that the Act is a complete code.

24. Learned Asst. Solicitor General Shri Champaneri pointedly referred to the affidavit-in-reply filed on behalf of respondent No. 1 Union of India by Shri Miglani and submitted that the primary object of the Act is to consider that the efficacy and safety is not compromised. He submitted that the guidelines which provide for registration of a formulation without registering the technical grade/material cannot be said to be erroneous. Similarly, he submitted that the policy providing for "deemed registration" of a technical after three years cannot be said to be contrary to the provision of law. He submitted that the practice of registration of a formulation and making the technical grade a deemed registration is to encourage introduction of new pesticide molecules in the interest of Indian farmers. He also referred to the affidavit-in-reply filed by Dr. Suresh Kumar, Plant Protection Officer, CIPMC, Vadodara to support his submission. He referred to this affidavit and submitted that the grant of registration for import of formulation without registering its technical is as per the existing law to encourage introduction of new and better pesticide molecules for Indian agriculture. He further referred to Para 10 of the affidavit and submitted that as stated,

presently for registering a "Formulation" the applicant is required to provide complete data on the "Technical" also, which is used for making the "Formulation", even if "Formulation" alone is to be imported. It amounts to providing full set of data required for registering any pesticides under 9(3). However, registering the Technical" when any applicant desires to import "Formulation" alone, may amount to duplication of work in the CIB&RC. Since the applicant is any way providing the full data, the procedure is such that the "Technical" would deem to have been registered along with the "Formulation." Protecting the Technical" for 3 years from "me too" registration cases u/s 9(4) of the Insecticides Act is aimed at encouraging introduction of new molecules beneficial to Indian farmer. The formulation import without registration of technical for new molecules is based on the requirements of the country with regard to the situation of pests, diseases and weeds, etc. The policy is to encourage new safe and easier to use formulations developed outside the

country for the benefit of the Indian farmers.

25. He further referred to this affidavit with reference to the recommendation of the Mayee committee and submitted that it is the commercial interest of the importer vis-?-vis the petitioners which has led to this litigation. He again referred to paragraph 24 which reads,

.... At the same time, protecting the Technical" for 3 years from "me too" cases u/s 9(4) of the Insecticides Act would encourage introduction of new molecules, that can be beneficial to Indian farmers. The formulation import without registration of technical for new molecules is based on the requirements of the country with regard to the situation of pests, diseases and weeds, etc. The policy is to encourage new safe and easier to use formulations being developed outside the country to be available to the Indian farmers. The time frame of three years is enough to develop the do's and don'ts of the products so that its life span of product is prolonged for continued efficiency.

26. He therefore submitted that registration of formulation, therefore, may not require registration of technical. He submitted that the Registration Committee may have its own procedure and therefore the indigenous manufacturers may also apply for by registration of formulation or technical u/s 9(4) as "me too" registration. He further submitted that in fact when such formulation is imported, the benefit can be extended to the local manufacturers as they are not required to generate new data.

27. Learned Asst. Solicitor General Shri Champaneri also referred to the statement of objects and reasons as well as the amendment Act No. 24 of 1977, Amendment Act No. 23 of 2000 and submitted that it is in public interest the steps are taken to protect human life and also providing for scope for new molecules which could be used advantageously by Indian agriculture. He, therefore, submitted that the guidelines as well as the policy cannot be said to be arbitrary, nor is it contrary to the statutory provisions.

28. In rejoinder, learned Advocate General and Sr. Counsel Shri Kamal Trivedi referred to the papers and submitted that the apprehension about the aspect of safety and quality is required to be protected and he made it clear that at the time of registration of formulation, though it may not be necessary, complete data as well as physical sample of technical grade/material is made available for the purpose of various tests and scrutiny by the laboratory and therefore the submissions made are misconceived. Learned Advocate General and Sr. Counsel Shri Trivedi referred to Annexure-E at p. 47 which provides for the guidelines for registration of pesticides dated 5-10-2011 with complete data in a tabular form and referring to the aspect of chemistry he submitted that various columns are provided for the test and examination of the chemical composition for which Item 1 to 10b are provided. He also referred to other columns of 12a to f. He also referred to col. 16 which provide,

The applicant should provide sample along with standards technical sample from

the principals/authorized dealers for chemical verification. In case of technical grade pesticides u/s. 9(3), samples of std. Impurities are also to be provided for chemical verification. In process sample to be provided in case of indigenous manufacture of technical u/s. 9(3) TIM & 9(4) TIM with undertaking.

He submitted that the aspect is also to be found in the affidavit of the Central Government at p. 206. He therefore submitted that the submissions are misconceived that the applicants who are importers are totally exempted from any kind of verification or test.

29. In rejoinder, learned Addl. Advocate General and Sr. Counsel Shri Tushar Mehta submitted that though now it is sought to be stated that even the physical sample is made available for the purpose of testing, he pointedly referred to the affidavit filed on behalf of the Central Government and emphasized that it has referred to only data meaning thereby the data on paper without actual physical testing or verification. On the other hand, the indigenous manufacturers like the petitioners are subjected to such scrutiny when there is specific provision as well as the guideline which empower the authorities to inspect their premises and also making necessary tests. He emphasized about the test of the chemical composition with detail and submitted that the chemical composition which provide for toxicity which is very much relevant is made in case of indigenous manufacturers, but the same is not made for the importers. He also referred to Annexure-E which provides for guideline for registration as on 5-10-2011 with a tabular form providing for various analysis and tests like chemistry as well as other parameters like, bioefficacy, toxicity, etc. He referred to Item 45 providing for "carcinogenicity" which is very relevant and submitted that in case of indigenous manufacturers such a test or verification is required, whereas for the importers it is not required. He also submitted that as could be seen from the data that some of the formulations are 50 years old and therefore there are loopholes and catches which may not be feasible, but in fact they are intended to benefit the importers and multinationals at the cost of indigenous manufacturers.

30. Learned Advocate General and Sr. Counsel Shri Kamal Trivedi for the purpose of clarification referred to the papers and submitted that the test of carcinogenicity is also to be made qua the importers when the sample is tested for chemical composition. 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. He further stated that the same treatment may also be made available to the indigenous manufacturers.

31. In view of the rival submissions, it is required to be considered whether the present civil applications for vacating the interim relief deserve consideration or not.

32. From the rival submissions and the viewpoint as it emerges, it is evident that the focus of both the sides is on the commercial interest. However, when the issue like this is touching upon the aspect of human safety and also the policy of the government as well as the role of the Government or the authority for protecting public interest and the safety of human life, it may require a closer scrutiny for the details about the manner and method of guidelines and the mechanism.

33. The first aspect which is required to be considered is the aspect of "deemed registration" which is sought to be granted in purported exercise of power u/s 9(3) of the Act. Though the submissions have been made by all the sides at length, the provisions of the statute do not refer to or empower any such deeming provision or "deemed registration" which could be granted. The submission made by learned Asst. Solicitor General Shri Champaneri referring to his affidavit that the Government has considered the aspect of bioefficacy and human safety as well as interests of Indian agriculture while permitting such import of the molecules or formulations, it cannot be said that the respondent Union of India has taken care for protecting human interests.

34. It is required to be mentioned that the Statement of Objects and Reasons refers to the poisoning cases in Kerala and thereafter in Bombay which has led to the establishment of inquiry commission and the report that how the foodstuff can be contaminated and what would be the measures to be taken. The Statement of Objects, inter alia, also provide in its Bill,

prohibition of import, manufacture, sale, etc. of insecticides in contravention of the provisions of the Act.

There are subsequent amendments but a few relevant aspects which require consideration have not been placed on record or put to the notice like international conventions and treaties which provide for the minimum use of pesticides. The pesticides, human health and environment are aspects which are interlinked and there are studies and research which has led to such international conventions. The Food and Agriculture Organization of the United Nations has referred to the fact that 95 countries have agreed to 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.

Maria de Rodrigues, Chairperson of the Conference said, "it is expected that the trade can be better controlled and that the risks of these dangerous chemicals can be reduced to benefit people and the environment." It is also recorded, "the global market for pesticides continues to grow and is estimated at \$ 30 billion for 1996. Companies based in Western Europe are currently the world's largest chemical producers. The fastest growing markets are in developing countries, particularly in Latin America and Asia. Africa is increasingly using pesticides on

export crops.

(emphasis supplied)

Thus, according to the United Nation's Environmental Programme, there are number of highly toxic chemicals that persist in the environment, accumulate in wild life and people.

35. It is in this background when, on one hand, there is a move for organic farming or conscious awareness for lesser use of pesticides, it is desirable for a country like ours to have a fresh look at such issues. The Government of India when it is claiming that sufficient care has been taken, as stated in the affidavit, may also have more effective and transparent procedure as well as enactments to protect the soil, environment and human life considering the bioefficacy and the standards of impurities. Therefore, when the statute like the Act has been intended to have some amount 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. The Act does not provide for grant of deemed registration and it is by way of guidelines or procedure evolved by the Registration Committee such deemed registration is sought to be granted to the importers like the applicants which, according to the petitioners, are intended to create monopoly in their favour. Therefore, these aspects are also required to be considered.

36. As provided in Section 9(3B) of the Act, the Registration Committee is empowered to grant the registration provisionally for a period of two years subject to the conditions as may be specified. In other words, when there is a provision for granting provisional registration, one fails to understand how a novel idea of granting deemed registration is evolved by the Registration Committee which is not in fact provided by the statute itself. The Registration Committee is a creature of the statute and therefore all its powers, functions have to remain within the bounds of the parent statute and it cannot go beyond what has been provided in the statute. The submission made by learned Asst. Solicitor General Shri Champaneri that it can evolve its own procedure has a reference to the procedure about the functioning, but it does not empower such committee to do something which is not provided in the statute itself. Further, what cannot be done directly cannot be permitted to be done indirectly also. In fact, if such a thing is permitted, it would allow things which are not provided in the statute, against the legislature will or intention. Therefore, the submission made by learned Addl. Advocate General and Sr. Counsel Shri Tushar Mehta about deemed registration being contrary to the statutory provision is justified.

37. Another facet of the argument which focuses mainly on the aspect of the (a) safety and bioefficacy, and (b) discrimination are required to be considered. Again, as stated above, the aspect of safety, bioefficacy, etc. are issues which the respondent Union of India has to come out with more effective guideline or mechanism. The emphasis about compulsory registration of the technical

according to the applicants importers, is intended only for commercial interests of the petitioners is required to be considered.

38. The emphasis of learned Addl. Advocate General and Sr. Counsel Shri Mehta that this aspect coupled with the aspect of discrimination that they are not treated on equal footing requires a closer scrutiny. The discrimination which has been claimed has not been made out inasmuch as the indigenous manufacturers are not prohibited or prevented from registering their own technical grade/material on the basis of necessary research and generation of data base. The main focus or complaint has been that when the formulation is imported, its technical grade/material is not required to be registered which may lead to import of such pesticides and chemicals which are spurious/harmful or which may cause harm to the soil and human life is taken care of when learned Advocate General and Sr. Counsel Shri Trivedi appearing for some of the applicants importers have conceded and clarified that the actual physical sample of the technical grade/material is also made available for testing even for import of the formulations. He has further stated that appropriate directions could be issued even if it is not being followed strictly. Learned Sr. Counsel Shri Thakore as well as learned Sr. Counsel Shri Joshi appearing for some of the applicants-importers have also agreed and have no objection.

39. Therefore, when the formulation is imported, if the technical grade is also subjected to some laboratory test or scrutiny on the basis of actual physical sample qua each consignment, it would take care of any such apprehension. Further, Annexure-E to the civil application providing for the guidelines as on 5-10-2011 referred to in a tabular form provide for the technical aspects like chemistry and the test of chemical components. Clause 16 of Annexure-E which has been emphasized by learned Advocate General Shri Trivedi that the applicants like the importers provide a sample along with standard technical sample for chemical verification and in case of technical grade pesticides u/s 9(3) such standard impurities are also provided for chemical verification will give an opportunity to the authorities in India to have necessary test for the aspect of safety and bioefficacy of human life and animals and environment.

40. Therefore, as recorded hereinabove, the reasons or the background on the basis of which the apprehension is voiced has been clarified and therefore when the actual physical sample of the technical grade/material is also made available for inspection or verification for laboratory test, the aspects of safety or bioefficacy could be examined. Moreover, irrespective of the rival claims and the commercial interests, the court would be concerned with the aspect of safety and bioefficacy of human life and animals as well as the environmental effects. This could be a matter which has to be considered based on survey, analysis and other material at the time of final hearing. At this stage when prima facie it is shown that the apprehension about the aspects of safety or bioefficacy is taken care of and when it is a matter which require a proper guideline by the Union of India based on detailed study, it would not be in the interest of justice to

continue the interim relief and the Court could examine the issues in detail at the time of final hearing.

41. Therefore, at this stage, for the purpose of deciding the present civil applications for vacating the interim relief, it has to be considered for such limited aspects on the prima facie material and examination or scrutiny of rival submissions in order to maintain a balance of the rival claims and the aspects of safety of human and animal life or the environment. Further, it would be for the respondent-Union of India or the concerned administrative department to consider the requirements for the imports in India for future and appropriate directions could be issued at the time of final hearing. For example, when it is provided that the molecule one which is registered outside India within 15 years could be treated as new molecule leaves much to be desired as in these days of technology and scientific advancement a span of 15 years could not be a reasonable period and it could be considered for reducing the said period by the respondent Union of India after necessary examination of relevant issues. In fact, prima facie examination of the details as canvassed by learned Addl. Advocate General and Sr. Counsel Shri Mehta that some of the technical grade and formulations have its origin 40 years back and therefore such outdated formulations are sought to be imported to be used in India is a matter of great concern which the respondent Union of India should examine with necessary sensitivity regarding the bioefficacy, Indian agriculture, Indian climatic conditions as well as protection of human life, animals and the environment. Therefore, though sufficient provision is made in the statute referring to the procedure u/s 9(4) of the Act for registration of insecticides, it cannot be said that the legislature is not conscious about such aspects, but what is required is a more sensitive and proper approach to deal with such issues at the time of actual implementation of the law.

42. It is demonstrated that by indirect way of "deemed registration", what is not intended by the legislature is introduced and therefore it is necessary that there should not be any compromise with regard to the aspects of safety and protection of human and animal life and environment. There has to be some criteria or parameters about the scope of its harmful effects or damage to the soil as well as living beings and there has to be a mechanism for transparent availability of data and analysis rather than concentrating the power only on a body like the Registration Committee.

43. 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.

44. Therefore, the larger issues involved in these petitions with regard to human

safety, bioefficacy, interests of multinationals vis-à-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.

45. Therefore, it would be in the fitness of things to leave such larger issues aside for the purpose of deciding the present civil applications for vacating the interim relief. The interim relief may be vacated/modified subject to some of the conditions which takes care of the aspects of safety till fresh guidelines are issued by the Government and the matter is heard and decided finally. This is only as and by way of an interim arrangement pending final hearing and/or a proper mechanism and guidelines by the Union of India with much focus on the aspects of human safety and bioefficacy. The import of such formulations deserves to be allowed as it could not be totally stayed without complete data or the details available which may have a bearing on the agriculture. This has to be considered also while considering the broad aspects for grant of interim relief like prima facie case and comparative hardships, etc.

46. Therefore, the present civil applications deserve to be allowed and accordingly stand allowed and the interim relief stands vacated/modified subject to the conditions 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.

Rule is made absolute to the aforesaid extent. The main matters are ordered to be fixed for final hearing expeditiously.

47. After the order was pronounced, learned advocate Ms. Manisha Lavkumar has requested for stay of the operation of this order to enable her clients (original petitioners) to have further recourse. Learned Advocate General and Sr. Counsel Shri Kamal Trivedi as well as other senior counsel have opposed the request. Having regard to the facts and circumstances, the request is turned down. The Registry is directed to keep a copy of the order in each of the matters.