

(1984) 07 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1204 of 1980

M.s New Chemi Industries Pvt. Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-07-1984

Acts Referred:

Insecticides Act, 1968 — Section 9, 9(3), 9(4)

Citation : AIR 1985 Bom 408

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

**Advocate : C.M. Korde, instructed by Hooseini Doctor and Co, for the Appellant;
S.S. Parkar and S.G. Shah, for the Respondent**

Judgement

1. A matter which should not have seen light of the lay in a Court of law was even so compelled to be brought before it by way of this petition under Art. 226 of the Constitution because as is not unusual - non - application of mind to the basic facts and to the plain, unambiguous and mandatory provisions of the statute in question.

2. This petition arises out of proceedings under the Insecticides Act, 1968 (hereinafter the Act) which was enacted by Parliament in 1968 to regulate the import, manufacture, sale, transport, distribution and use of insecticide with a view to prevent risk to human beings or animals, and for matters connected therewith. The provision of the said Act relevant to the dispute here involved is S. 9. Under S. 9(1) of the Act, any person desiring to import or manufacture any insecticide may apply to the Registration Committee (hereinafter the Committee) for registration of such insecticide. Every application for such registration shall under S. 9(2) of the Act be made in such form and contain such particulars as may be Prescribed. Where such application is the first of its kind in respect of the insecticide in question, it has to be considered as one under S. 9(3) of the Act. In such case, the Committee may, after such enquiry as it deems fit and after satisfying itself that the insecticide to which the application relates conforms to

the claims made by the importer or by the manufacturer, as the case may be, as regards the efficacy of the insecticide and its safety to human beings and animals, register, on such condition and on payment of such fee as may be prescribed, the insecticide in question and allot a registration number thereto and issue a certificate of registration in token thereof within a period of twelve months from the date of receipt of the application. Under the first proviso to S. 9(3), this period of twelve months may be extended for a further period not exceeding six months. Under the second provision to S. 9(3), if: the Committee is of the opinion that the precautions claimed by the applicant as being sufficient to ensure safety to human beings or animals are not such as can be easily observance of that notwithstanding observance of such precautions the use of the insecticide involves serious risk to human beings or animals, it may refuse to register the insecticide. However, once such application in respect of a particular insecticide is granted a registration certificate, and once such insecticide is registered, then by virtue of S. 9(4) of the Act.

"..... any person desiring to import or manufacture the insecticide or engaged in the business of, import or manufacture thereof shall on application and on payment of prescribed fee be allotted registration number and granted a certificate of registration in respect thereof on the same conditions on which the insecticide was originally registered."

3. Now, the facts and circumstances leading to this petition are, indeed, few and simple. In Nov. 1978 a third party. National Organic and Chemical Industries Limited (hereinafter NOCIL), had obtained registration of the same insecticide Monocrotophos 36% WSC w/w), which constitutes the subject matter of this petition. That was under S. 9(3) of the Act. It was thereafter in August 1979 that the petitioners - a private limited company engaged in the business of manufacturing and selling various insecticides and pesticides for agricultural and public health purposes - applied for registration of the same insecticide. Along with this application was also enclosed letter from NOCIL confirming that it had already been granted registration of the said insecticide and that it was willing to give the recipe for its formulation to the petitioners. In December 1979 the petitioners were granted registration accordingly. But instead of granting registration on the same conditions on which that the insecticide was originally registered, certain additional conditions, as stated in para 6 of this petition, were imposed. Some correspondence ensued. In the meanwhile in July 1980 the petitioners received letter from the Committee requesting the petitioners to return the original registration for

"..... some corrections in the registration have to be incorporated which were left out through oversight."

The petitioners accordingly forwarded the same. As it was not sent back, reminder after reminder was sent. However, instead of receiving the registration certificate, petitioners received letter to the effect that as the petitioners original application for registration appears to have been first submitted after 28th

Feb.1979, they should

".....come personally along with the documents in proof of having submitted the application on or prior to 28th Feb.1979."

The petitioners submitted that they were unable to appreciate the relevance either of the date 28th Feb.1979 or of the enquiry. The petitioners, therefore, once again called upon the Committee to return the certificate, but in vain. Hence this petition (a) challenging the additional conditions and (b) claiming return of the original certificate.

4. Hearing rival submissions of the respective Counsel Mr. C. M. Korde for the petitioners and Mr. S. S. Parkar for the respondents and going through the petition and the Affidavits. I find the petitioners' grievance well justified. Reliefs claimed pre-eminently deserve to be granted. In its affidavit, the Committee has come forth with a variety of justifications, none of which has any merit therein. Learned Counsel Mr. Parkar for the respondents found it, and naturally so, an uphill task to oppose this petition. Indeed, there was no valid answer at all to the reliefs claimed. And, as indicated, this matter which need not have come to the Court has been nevertheless compelled to be so brought here because of concerned authority's non-application of mind to the plain and simple factual and legal position which was irresistibly in favour of the petitioners.

5. The respondents sought to justify the impugned action on the ground that the petitioners' application must be treated as one under S. 9(3) of the Act and not under S. 9(4) thereof and this only and simply because the application did not explicitly state the provision under which it was made. Now, as S. 9(2) itself provides, application for registration has to be in prescribed form. And when one turns to the prescribed form one does not find any distinction form-wise between S. 9(3) and S. 9(4) of the Act. For the purposes of both of these sub-sections one common form is prescribed. But the scheme of S. 9 itself clearly shows that only the first application for registration of a particular insecticide is governed by sub-sec. (3) thereof, while subsequent applications for registration of the same insecticide are all governed by sub- Sec. (4) thereof . Plain reading and the clear language of S. 9 shows that once registration is initially granted to any party in respect of a particular insecticide, S. 9(3) gets exhausted qua that insecticide and all subsequent applications for registration of the same insecticide stands governed by S. 9(4) of the Act. The petitioners' application for registration made in the prescribed form, being in respect of an insecticide already earlier granted registration in favour of NOCIL, was thus a subsequent application for registration of the same insecticide and was obviously, therefore, governed by sub-sec. (4) of S. 9(4) of the Act. What is more, along with the application itself was enclosed a letter from NOCIL categorically stating that for the same insecticide NOCIL had been already earlier granted registration and that NOCIL was prepared to give to the petitioners the recipe thereof. Thus, the petitioners' application in the prescribed form together with the annexed letter of NOCIL left no doubt whatever and should have made it clear to the Committee and all

concerned that the said application was governed by S. 9(4) of the Act. It is unfortunate that in spite of such clear and categorical position, the respondents declined to see and accept the obvious and wrongly refused to return the registration certificate rightly granted earlier.

6. Yet another justification for the impugned action was that unless the Committee is fully satisfied that the insecticide in respect of which the first application for registration was granted, is safe and efficacious, no subsequent application for registration thereof can be considered. This justification also is without merit. There is nothing in S. 9 to warrant the same. Indeed, the mandate of S. 9(4) makes it incumbent to grant the petitioners' application. In the context, it is also pertinent to note that in respect of this very insecticide the Committee, has granted not one but several registrations in favour of different parties from time to time. That apart, and still further, the first applicant NOCIL was granted registration as long back as in November 1978. Mr. Parkar, learned Counsel for the respondents, was unable to inform this Court even in this year 1984 as to how long and how many years it would take for the Committee to get fully satisfied in the aforesaid behalf. Besides, there is also not even the remotest indication whether the Committee has at all at any time even entered upon the process of getting itself so satisfied. Impression cannot be said to be unfounded that the justification now put forth is an afterthought. Besides, it has also no warrant in law.

7. Coming to yet another justification set forth one finds the position still worse. Contention is that the petitioners' application for registration being after 28th Feb.1979, the same had to be treated differently from the application or applications made prior to that date. In other words, pre-28th Feb.1979 and post 28th Feb.1979 applications had to be treated differently. Why this should be so is, however, difficult to know. No reasons are disclosed in this behalf. Indeed learned Counsel Mr. Parkar was himself in the dark. Ex facie this cut-off date is an arbitrary fixation without any warrant in law. There is nothing in the Act to justify fixation of any such cut-off date. Distinction sought to be drawn between applications prior to 28th Feb.1979 and applications thereafter is without any basis and totally extraneous to S. 9 of the Act. It is akin to laying down an unwarranted and arbitrary condition illegally restricting the full effect of the legislative mandate in favour of the petitioners.

8. It is, however, not necessary to pursue this aspect any further because even on the assumption that the date fixed had some legality or validity attached thereto, one finds that in practice the Committee has miserably failed to adhere thereto and has practised rank discrimination against the petitioners. Like the petitioners, several others had also applied after 28th February 1979 for registration of this very insecticide and it is significant that all these several applications were granted. And the petitioners' claim though similarly situated and circumstanced, is sought to be rejected. Petitioners have placed on affidavit before this Court a list of as many as fifteen parties whose separate and

respective applications for registration of the same insecticide even though made after 28th February 1979 have been granted. Yet another affidavit is filed giving full and categorical particulars in respect of at least four parties. M/s. Gujarat Krishi Chem Corporation had applied on 29th Dec. 1982 and registration was granted to it on 3rd October 1983. One M/s. Parul Industries in Gujarat applied on 6th Sept. 1982 and was granted registration on 11th July 1983. Still further, one M/s. United Fertilizers Industries applied on 23rd Feb. 1983 and was granted registration on 25th Aug. 1983. There is yet another party M/s. Indochem. Vatva, whose application was received by the Committee on 22nd Feb. 1983 and the same was granted on 16th Oct. 1983. Thus, despite fixing a cut-off date 28th Feb. 1979 and assuming such fixation to be legal and valid, one finds several parties applying thereafter and getting registration. This is thus a clear case of discriminatory and arbitrary action and treatment qua the petitioners. Such action is liable to be struck down and equality restored.

9. Even on the question of imposing in relation to the petitioners' registration certificate certain conditions in addition to those laid down in the case of NOCIL one finds the Committee's action unsustainable. The scheme of S. 9 of the Act shows that once an application of any person or party in respect of a particular insecticide is granted first in point of time, all subsequent applications by other persons or parties in respect of the same insecticide would in law fall under and stand governed by sub-sec. (4) of S. 9 of the Act. And under the express terms of this sub-section the petitioners:

"..... shall on application and on payment of prescribed fee be allotted a registration number and granted a certificate of registration in respect thereof on the same conditions on which the insecticide "was originally registered."

Thus the additional conditions (vide para 6 of the petition) sought to be imposed in relation to the petitioners' registration certificate are liable to be set aside and quashed.

10. However, statement by the petitioners learned Counsel Mr. C. M. Korde is here recorded to the effect that without prejudice to the petitioners' rights and contentions relating to the legality and validity of the conditions attached to the registration certificate dt. 3rd Oct. 1983 in favour of M/s. Gujarat Krishi Chem Corporation, the petitioners are ready and willing to abide by the said conditions in respect of the registration certificate issued to it in December 1979.

11. In all the circumstances, the petitioner's application for registration was required and deserved to be granted. The petitioners were in law entitled to the said relief and it was in law incumbent upon the Committee to grant the same accordingly on the same conditions on which the insecticide in question was originally registered. The Committee was under statutory obligation to do so. The legislative mandate is clear and categorical.

12. In the result, this petition succeeds and the same is allowed.

(a) It is held and declared that the respondents are not justified in refusing to return to the petitioners the original registration certificate and the refusal in that behalf is illegal and unsustainable. The same is set aside and quashed.

(b) As in compliance with this Court's interim order the original registration certificate has been already returned to the petitioners and as the same is now with the petitioners, no further order or direction calling upon the respondents to return the said original registration certificate to the petitioners is necessary.

(c) It is further held and declared that the additional conditions vide para 6 of this petition in relation to the registration certificate granted to the petitioners are not legal and valid and the same are set aside and quashed.

13. Rule is made absolute in terms aforesaid with costs.