

(2020) 08 GUJ CK 0306
In the Gujarat High Court

Case No : R/Special Civil Application No. 10804 Of 2019

Rainbow Agro Science Private Limited	APPELLANT
Vs	
Union Of India	RESPONDENT

Date of Decision : 26-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 226, 227
Insecticides Act, 1968 — Section 5, 9, 9(3), 10

Citation : (2020) 08 GUJ CK 0306

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : Kamal Trivedi, Nikunt K Raval

Final Decision : Allowed

Judgement

Bhargav D. Karia, J

1. Heard learned Senior Counsel Mr. Kamal Trivedi assisted by learned advocate Mr. A.K. Trivedi for the petitioner and learned Standing Counsel Mr. Nikunt Raval for the respondents.

2. Rule returnable forthwith. Learned standing counsel Mr. Nikunt Raval waives service of notice of rule on behalf of the respondents.

3. Having regard to the controversy involved in the present case, which lies in a very narrow compass, with consent of the learned advocates of the respective parties, the matter is taken up for final hearing.

4. By this petition, under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the following reliefs:

"(A) Your Lordships may be pleased to issue an appropriate writ, order or direction, quashing and setting aside the impugned order dated 18th April, 2019, passed by the Respondent No.1, i.e. the Appellate Authority in Appeal No.2 of 2019; (at Annexure-A);

(A) Your Lordships may be pleased to issue an appropriate writ, order or direction, directing the Respondent No.2 process and decide the applications of the Petitioner for registration of its insecticides and also accept applications for registration of the insecticides for which the Research Test & Trails permit have been granted by the Respondent No.2;

(B) Pending admission hearing and final disposal of the present petition, Your Lordships may be pleased to direct the Respondent No.2 to process and decide the applications of the Petitioner for registration of its insecticides, in accordance with the principles laid down by the Respondent No.1 in its orders dated 20th April, 2018, and 20th March, 2019, passed in Appeal No.7, 9, to 11, 13 to 17/2017 and the decision taken by the Respondent No.2 in its 389th Minutes of the Meeting;

(C) Pending admission, hearing and final disposal of the present petition, Your Lordships may be pleased to stay the execution, operation and implementation of the impugned order dated 18th April, 2019, passed by the Respondent No.1, i.e. the Appellate Authority in Appeal No.2 of 2019; (at Annexure-A);

(D) Your Lordships may be pleased to grant an ex-parte ad-interim relief in terms of para 10(C) and (D) above;

(E) Your Lordships may be pleased to grant any other and further relief/s as may be deemed just and proper in the interest of justice and fitness of things."

5. The brief facts of the case are as under:

5.1) The Petitioner is a company registered under the Companies Act, 1956, and is inter-alia engaged in the import, manufacturing, testing and sale of insecticides and pesticides. The Petitioner is represented through its director and shareholder.

5.2) It is the case of the petitioner that the Insecticides Act, 1968 ("the Act" for short) was promulgated with the object of, inter-alia, regulating the import, manufacture and sale of insecticides. The definition of insecticide provides for 'substance included in the Schedule to the Act' which can be present in varying forms and concentrations. In its purest commercial form, such a substance is called 'technical' grade and is an insecticide as defined in the Act. However, no such technical grade insecticide is 100% pure in terms of the substance (active ingredient) and necessarily has impurities present that make it stable, commercially saleable and provide industrial applicability. A technical grade insecticide is not merely a chemical substance defined by its molecular formula but is a combination of the substance and its associated impurities and which have a significant impact and role in the safety aspects of the technical.

5.3) It is the case of the petitioner that several different types of preparations can be made from the same technical grade substance, having different physical properties and forms, different chemical properties and concentrations, different efficacy, toxicity and other properties and each of such preparation also has its

own impurity profile. Each of such substance is recognized as a separate and independent insecticide under the Act. The said category of insecticides are known as formulations. It is the said formulation insecticide that is used for application on crops for eliminating pests.

5.4) It is the case of the petitioner that from the same technical grade, various formulations types and strengths can be derived depending upon the nature of activity of the formulation on the crops and pests on= which it is intended to be used. Section 3(e)(iii) of the Act recognizes the technical grade, as well as, each formulation derived therefrom as a separate and independent insecticide.

5.5) It is the case of the petitioner that Section 5 of the Act provides for constitution of a Registration Committee by the Central Government, inter alia, to register insecticides after scrutinizing the formulae and verifying the claims made by the importer or the manufacturer as regards their efficacy and safety to human beings and animals.

5.6) It is the case of the petitioner that Section 9 of the Act mandates that any person desiring to import or manufacture an insecticide must seek its registration and that separate applications are required to be submitted for each insecticide.

5.7) It is the case of the petitioner that as per section 9 of the Act, any person desiring to import or manufacture any insecticide, be it technical grade or formulation, is required to apply for registration of each such insecticide and unless the same is registered, it cannot be imported or manufactured.

5.8) It is the case of the petitioner that Section 9(3) of the Act requires the Registration Committee (Respondent No.2) to satisfy itself of the claims made by an applicant as to the efficacy of the insecticide sought to be registered and its safety to human being and animals, before its registration.

5.9) It is the case of the petitioner that to satisfy itself on the aspects of efficacy and safety, the Respondent No.2 has, from time to time, framed guidelines governing the procedure for registration of insecticides, both of the technical grade and formulation, whether the same are to be imported or manufactured indigenously. These guidelines require, inter-alia, generation of extensive data and carrying out of extensive studies and research on various parameters and submission of data and material as laid down by Respondent No.2 in the guidelines framed by it.

5.10) It is the case of the petitioner that for the purposes of evaluating an application for registration of an insecticide under Section 9 of the Act, the Respondent No.2 has laid down elaborate guidelines dated 5th October, 2011. The 2011 Guidelines lay down the requirements of generation and furnishing of data and information on various parameters, grouped under following categories, namely, Chemistry, Bioefficacy; Toxicity; and Packaging.

5.11) It is the case of the petitioner that the 2011 Guidelines lay down requirements for generating and furnishing of data and information for

registration of each insecticide proposed by an applicant for an insecticide. The said guidelines enumerate the comprehensive data, information and samples to be provided for scrutiny and to ascertain the aspects of efficacy and safety before its registration. The aforesaid 2011 Guidelines lays down the complete data requirements to be submitted, which would be scrutinized by the Respondent No.2 for granting the Registration to the insecticide. Along with the data requirements, the applicant seeking registration also has to provide data of 2 seasons/years from at least three agro-climatic conditions, international and Indian data on translocation of plant, metabolism in soil, water, metabolites, its persistence level in soil and water, phytotoxicity on two representative crops from two climatic zones, one season residue data, etc.

5.12) It is the case of the petitioner that any person desiring to import or manufacture any insecticide has to first seek permission of the Respondent No.2 for generation of scientific data as per its guidelines and then generates scientific data on these parameters. The person thereafter submits an application to the Respondent No.2 and also submits the scientific data so generated alongwith certain specified legal documents, for grant of registration. In case of registration under the import category, an import permit for Research, Test & Trials (RTT) is issued by the Respondent No.2 on an application of the applicant(s) to facilitate the import of sample quantities of the insecticide which is proposed to be registered for generation of scientific data. In case of indigenous manufacture, sample quantities can be manufactured by the applicant(s) at its premises thereafter commence the generation of such data and intimating to the Respondent No.2.

5.13) It is the case of the petitioner that till date no new insecticide molecules have been developed in India and all of the existing the insecticide molecules, registered in India have been developed in other countries. Therefore, the Respondent No.2 originally used to grant registration for import of the technical grade insecticides and to the indigenous manufacturers for its formulation(s) in the country. It also granted registration for indigenous manufacture of technical grade insecticides, as well as, its formulation. Subsequently, the guidelines for registration of indigenous manufacture of technical grade insecticides against an already registered technical grade insecticide for import (TIM v/s TI) and registration for import of a technical grade insecticide against an already registered technical grade insecticide for indigenous manufacture (TI v/s TIM) were framed. The purpose of such comparative guidelines was to grant registration on relaxed data requirements once the formulae of the insecticides are found comparable (chemically equivalent) as their efficacy and safety has already been evaluated and assessed by the Respondent No.2 earlier at the time of registering insecticide for the first time.

Whenever a guideline for import is framed, simultaneously a guideline for indigenous manufacture is also framed and if a guideline for indigenous

manufacture is framed, simultaneously a guideline for import is also framed. This is done to provide a level or equal field to both, the import, as well as, the indigenous manufacture of the insecticide.

5.14) It is the case of the petitioner that in view of the above, the procedure followed by the Respondent No.2 is as follows:

"(i) In case of import, 'Research Test and Trials' (herein after referred to "RTT") permit is first obtained by the applicant(s) from the Respondent No.2, the sample quantity(s) is imported and generation of scientific data as per the relevant guidelines of the Respondent No.2 is commenced. In case of indigenous manufacture, sample quantity of the insecticide is synthesized in the laboratory of the applicant(s) and generation of scientific data as per relevant guidelines of the Respondent No.2 is commenced, intimating the Respondent No.2 simultaneously about it, as no RTT or permission is issued in case of manufacture.

(ii) The generation of scientific data as per the guidelines of the Respondent No.2 involves manpower, time, energy and huge investment in terms of money. Therefore, once the RTT permit has been issued or intimation has been given for commencing data generation, it implies a commitment or green signal by the Respondent No.2 to the applicant(s) to proceed with investing in the process of data generation. The same is very costly, running into crores of rupees depending on the category of registration and is a time-consuming effort. It is stated that substantial investments of the applicant(s) remains at stake till the receipt of Certificate of Registration. Due to this reason, any decision of the Respondent No.2 is applicable prospectively and not retrospectively so that it does not adversely affect the applicant in any manner.

(iii) On completion of generation of all the scientific data, the application alongwith the data and fee is submitted by the applicant(s) to the Respondent No.2 along with other specified legal documents.

(iv) Preliminary scrutiny of the applications is carried out by the Respondent No.2 to check the compliance of the relevant guidelines.

(v) Once an application is 'Accepted' in the preliminary scrutiny, it implies that the submission of scientific data and other documents are in compliance with the requirement of the guidelines of the Respondent No.2 for a particular category of registration. The legal documents and scientific data are scrutinized by the experts of the concerned subject, i.e. Law, Chemistry, Bio-efficacy, Toxicology and Packaging. A sample of the insecticide is also tested in the Central Insecticides Laboratory of the respondents, respectively. If the application is found to be correct legally and scientifically, it is considered as complete and it is placed before the Respondent No.2 in the form of a detailed and consolidated Agenda Notes from all the disciplines for further assessment and approval by the Respondent No.2. If the application is found deficient during the scrutiny itself, the deficiencies are communicated to the applicant for rectification appropriately within a specified time limit. On submission of the reply by the applicant, it again

undergoes the process of scrutiny through the same expert(s) till approval or otherwise. Once approved by the Respondent No.2, a registration number is allotted and a Certificate of Registration (CR) is issued, which is a detailed document specifying the applicant (now registrant), premises, category of registration, name of the insecticide and its coding (strength, etc.), registration number, source of import in case of import, chemical composition which shall be adhered to, label and leaflets, specifying the type of insecticide, use, manner of use, application methods, pest and crop/vector, safety devices, antidotes, manner of disposal of remnants/containers, etc.

5.15) It is the case of the petitioner that the petitioner started to carry out its business in fertilizers and pesticide, providing employment to around 50 agriculture graduates besides necessary administrative, accounts and ancillary staff. The petitioner initially planned to import pesticides, formulate and thereafter market the same.

Subsequently, the Petitioner planned to develop a Research and Development Centre to develop processes of manufacture for different insecticides, preferably import substitutes, and switch over to manufacturing indigenously and slowly substitute imports completely with indigenous manufacturing.

5.16) The petitioner accordingly planned to start with 23 pesticides and applied for issuance of RTT permits, which were granted by the Respondent No.2.

5.17) Upon issuance of the RTT permission, the petitioner undertook substantial investments and completed the generation of the scientific data of five pesticides and submitted the same for registration. The details of the same are as under:

Sr. No.

Insecticide

Date of online submission

Date of submission for testing in Central Insecticide Laboratory

1.

Butachlor Technical

17.08.2016

08.09.2016

2.

Glyphosate Technical

05.09.2016

08.09.2016

3.

Imidacloprid Technical

26.11.2016

30.11.2016

4.

Difenoconazole Technical

10.12.2016

21.12.2016

5.

Propiconazole Technical

05.06.2017

06/06/17

5.18) It is the case of the petitioner that the aforesaid applications were being duly processed and in the intermediate period, to the surprise of the Petitioner, the Respondent No.2 in its 371st Meeting dated 16th December, 2016, inter alia, opined to withdraw the guidelines pertaining to the registration of insecticides falling under the category of TI v/s TIM, i.e. registration of import of a technical where a similar technical is already registered for indigenous manufacture. This is the very same category under which the aforesaid five applications, of the Petitioners, were being processed. The said decision was taken by the

Respondent No.2 with the sole purpose of giving boost to the 'Make in India' initiative of the Government of India. The same was forwarded to the Department of Agriculture Cooperation and Farmers Welfare for necessary approval. Subsequently, in the 375th Meeting of the Respondent No.2 held on 19th May, 2017, the Respondent No.2 reviewed the directions received from the Department of Agriculture Cooperation and decided to withdraw the guidelines pertaining to the registration under the TI v/s TIM category. It is the case of the petitioner that the said decision was prospective in nature, in as much as, the Respondent No.2 categorically held that no application under the category shall be accepted henceforth.

5.19) It is the case of the petitioner that on bare perusal of the decision taken by the Respondent No.2, it is amply clear that the same would apply to the applications, if any submitted, in the future, i.e. after the date of the decision. However, to the sudden shock and the surprise of the Petitioner, the Respondent No.2 in its 376th Meeting held on 31st July, 2017, took a decision to close the pending 114 applications for registration of insecticide under TI v/s TIM category. The said included the above- mentioned applications of the Petitioner, as well.

5.20) It is the case of the petitioner that the petitioner had not only completed

and submitted the data of the aforesaid five insecticide, but had also generated most of the data for fourteen other insecticide and for the balance four insecticides, partial data had been generated.

5.21) It is the case of the petitioner that it has spent almost three years and over Rs.9,98,28,133/- (Rupees Nine Crore Ninety Eight Lakhs Twenty Eight Thousand One Hundred and Thirty Three Only) for the generation of the scientific data which is required for registration of the insecticides for which the Respondent No.2 had granted the RTTPermission to the Petitioner from 2014 to 2017, pursuant to which the Petitioner was granted permission to start generation of the scientific data.

5.22) It is the case of the petitioner that in view of the decision taken by the Respondent No.2 on 31st July, 2017, and having placed the applications of the Petitioner in abeyance, the Respondent No.2 had effectively given a retrospective effect to its sudden and unexpected decision. This was despite the fact that several companies including the Petitioner, had been granted the RTT permission and whose applications for registration were pending and under process before the Respondent No.2. In fact, the Petitioner had invested more than Rs.10 crores, till the date of the decision of the Respondent No.2 in withdrawing the guidelines. In view thereof, the registration process of the insecticides for which applications had been submitted by the Petitioner, came to a grinding halt and the investments of the Petitioner, in its entirety, was blocked, effectively exposing the Petitioner to close its unit.

Respondent No.2 whilst withdrawing the guidelines, ought to have allowed the completion of the registration process of the applications seeking registration which were already pending and for which the RTT permissions had been granted. Even otherwise, the withdrawal of the TI v/s TIM guidelines for the reason to boost the 'Make in India' initiative is arbitrary and suffers from non-application of mind, inasmuch as, the import of the insecticide has not been barred and the same continues to this date.

5.23) It is the case of the petitioner that withdrawal of the guidelines pertaining to the registration in the category of TI v/s TIM came to be challenged by the Agro Chem Federation of India before the High Court of Delhi, in Civil Writ Petition No.1827 of 2018, wherein the High Court vide its order dated 26th February, 2018, granted a stay over the decision of the Respondent No.2 in withdrawing the aforesaid guidelines.

5.24) Due to the withdrawal of the aforesaid guidelines, the application of two other applicants, namely, Crystal Crop Protection Limited and Willowood Chemicals Private Limited was kept in abeyance, which came to be challenged by it before the Appellate Authority. The Appellate Authority vide its order dated 20thApril, 2018, allowed the said appeals and directed that the Respondent No.2 shall review and consider all the pending applications as per the guidelines in vogue within a period of two months.

5.25) It is the case of the petitioner that in the above facts and circumstances, especially considering the two orders passed by the Appellate Authority which would also apply to the case/pending applications of the Petitioner, the Petitioner met with the Secretary of the Central Insecticides Board and Registration Committee, i.e. the Respondent No.2, and requested for the same consideration on its pending registration applications. The Petitioner was instructed to file a representation for consideration of its pending registration applications, which was submitted to the Respondent No.1 and 2 vide letters dated 18th May, 2018.

5.26) It is the case of the petitioner that that several representations were also submitted by other companies and in pursuance thereof, as well as, the above mentioned orders of the Appellate Authority, the same were taken up for consideration in the 389th Meeting of the Respondent No.2 held on 13th and 15th June, 2018. The Respondent No.2 in the Meeting decided that similar to the case of the Crystal Crop Protection Limited and Willowood Chemicals Private Limited, the pending TI v/s TIM applications of similarly placed persons would also deserve parity with the orders of the Appellate Authority and the same also deserved to be considered. It is the case of the Petitioner that the case of the petitioner is same as Crystal Crop Protection Limited and Willowood Chemicals Private Limited and it is a "similarly placed person" having "pending TI v/s TIM applications" and would also "deserve parity with the orders of the Appellate Authority".

5.27) It is the case of the petitioner that in view of the above decision of the Respondent No.2, the Petitioner once again met with the Secretary of the Central Insecticides Board and Registration Committee, i.e. the Respondent No.2, and enquired if any action or representation was to be taken or made by the Petitioner in accordance with the Minutes of the Meeting of the Respondent No.2. At the said time, the Petitioner was informed by the Secretary of the Central Insecticides Board and Registration Committee, i.e. the Respondent No.2, that it would be writing to and obtaining instructions from the Respondent No.1 for concurrence and that the said procedure would take 3-4 months. The petitioner relied upon the said instructions as it had no reason to doubt a Senior Officer of the Respondent No.2. Moreover, as the Respondent No.2 was undertaking suo moto action to give effect to the order of the Appellate Authority to the similarly placed parties, the Petitioner did not take any further action in order to avoid duplicity of the efforts.

5.28) The Petitioner did not receive any response either from the Respondent No.1 or the Respondent No.2. Therefore the Petitioner addressed letters dated 14th November, 2018, requesting for expeditious action in the matter. In the said letters, the Petitioner categorically stated that it had chosen not to file an appeal yet, as it was given to believe that the decision of the Appellate Authority, as well as, the one taken by the Respondent No.2 in its meeting would be equally applied to all the pending applications for registration. Subsequently, the Petitioner addressed another reminder dated 8th December, 2018.

5.29) As no response was received from the concerned authorities, the Petitioner was constrained to approach the Appellate Authority under Section 10 of the Act on 29th January, 2019, wherein the Petitioner prayed for considering and allowing its nineteen applications for registration of insecticides, which were already pending before the Respondent No.2 for registration under TI v/s TIM category, on the date of decision of the Respondent No.2 of withdrawing the guidelines under the said category.

5.30) During the pendency of the appeal of the petitioner, another appeal bearing No.9 of 2017 preferred by Tropical Agro System India Private Limited was heard by the Appellate Authority. In the said appeal the Appellate Authority allowed the appeal vide its order dated 20th March, 2019, inter alia holding that (i) giving the withdrawal of the guidelines under the category TI v/s TIM, a retrospective effect and thereby closing the pending applications under the said category is not sustainable in law; (ii) the withdrawal of the guidelines was under challenged before the High Court of Delhi, wherein a stay has been granted; and (iii) considering the prior orders passed by the Appellate Authority on the same issue, the Respondent No.2 was directed to consider the pending applications as per the TI v/s TIM guidelines, expeditiously, within a period of two months.

5.31) It is the case of the petitioner that the Appellate Authority had passed three orders in three appeals of the companies similarly situated as the Petitioner and having the identical issue, wherein the Appellate Authority had allowed the appeal; the withdrawn guidelines were under challenge before the Hon'ble High Court of Delhi, wherein a stay had been granted; and the Respondent No.2 in its 389th Meeting had taken a decision to give effect to the decision of the Appellate Authority to all similarly situated persons.

5.32) It is the case of the petitioner that in its appeal, it had also filed Written Submissions wherein it had highlighted the reasons for the time taken in preferring the appeal, as well as, the applications and representations filed by it before the Respondent Nos.1 and 2.

5.33) It is the case of the petitioner that the Appellate Authority vide the impugned order dated 18th April, 2019, rejected the appeal of the petitioner on the sole ground of limitation and without looking into the merits of the appeal. Whilst dismissing the appeals, the Appellate Authority overlooked the various representations and correspondences that had been addressed by the Petitioner to the Respondent Nos.1 and 2. The Petitioner was communicated the impugned order under the letter dated 22nd April, 2019, of the Respondents, which was delivered to Petitioner on 3rd May, 2019.

5.34) Subsequent to the above, the Respondent No.2 has granted five registrations under the TI v/s TIM category to three companies, similarly placed as the Petitioner, in the 390th, 392nd and 393rd Meeting of the Respondent No.2 held on 19th July, 2018, 29th August, 2018, and 24th September, 2018, respectively.

6. Learned Senior Advocate Mr. Kamal Trivedi assisted by learned advocate Mr. Anuj K. Trivedi submitted that by the impugned order dated 18.04.2019 passed in Appeal No. 2 of 2019 by the Appellate Authority, the appeal filed by the petitioner was dismissed only on the ground of limitation without entering into the merits of the matter, in view of the provision of Section 10 of the Insecticides Act, 1968 (for short 'the Act, 1968').

7. It was further submitted that the Appellate Authority in case of the other similarly situated applicants, who approached in time, passed the order directing the Registration Committee (RC) to review and consider all the pending applications as per the guidelines in vogue, at the relevant time, when the applications were made. He also referred to the orders passed by the Telangana High Court in case of Adama India Pvt. Ltd. v. Central Insecticides Board and Registration Committee CIB and RC and another in Writ Petition No. 21301 of 2019 dated 26.09.2019 and similar order passed by the High Court of Delhi in case of M/s. Agro Pack v. Union of India and anr. in W.P. (C) No. 9328 of 2019 and CM No. 38430 of 2019 dated 23.09.2019 and also the order of the High Court of Delhi in case of M/s. Parijat Industries (I) Pvt. Ltd. v. Union of India and anr. in W.P. (C) No. 189 of 2020 dated 10.01.2020.

8. It was submitted that in case of M/s. Parijat Industries (I) Pvt. Ltd. also, the Appellate Authority has dismissed the appeal on the ground of limitation and the Delhi High Court after following the order in case of M/s. Agro Pack directed the RC to consider the application of the said company i.e. M/s. Parijat Industries

(I) Pvt. Ltd. at par with other applications and take a decision for registration of the pesticides within eight weeks from the date of the communication of the order passed by the Court.

9. Learned Senior Advocate Mr. Trivedi relied upon the following decisions in support of his submission that delay should not come in way of rendering substantial justice by the adjudicating authority:

(i) In case of Collector, Land Acquisition, Anantnag & Anr. v. Kantiji & ors. reported in (1987) 2 SCC 107;

(ii) In case of K.C. Sharma v. Union of India, reported in (1997) 6 SCC 721;

(iii) In case of N.Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123;

(iv) In case of State of Nagaland v. Lipok AO & Ors., reported in (2005) 3 SCC 752;

(v) In case of Poonam & Ors. v. Harish Kumar, reported in (2012) 12 SCC 527

(vi) In case of Manoharan v. Sivarajan & Ors., reported in (2014) 4 SCC 163

10. He also relied upon Section 10 of the Act, 1968 to point out that the appellate authority had power to condone the delay as per proviso to Section 10

of the Act, 1968. It was therefore submitted that the petitioner is deprived of the treatment of considering the application of the petitioner by the RC at par with other similarly situated applicants, resulting into violation of Article 14 of the Constitution of India and as such because the appeal filed by the petitioner was dismissed only on the ground of limitation. It was therefore prayed that the petitioner should also be given the same treatment and benefit as given to the other similarly situated persons by condoning the delay in filing the appeal and by directing the RC to consider the application which was pending in 376th meeting of the RC in the year 2017.

11. On the other hand, learned Standing Counsel Mr. Nikunt Raval appearing for the respondents submitted that the impugned order passed by the appellate authority is in consonance with the provision of Section 10 of the Act, 1968 and he relied upon the following averments made in the affidavit in reply:

6. With reference to paragraph 1 of the petition, it is submitted that the Petitioner in the present Petition seeks to challenge the order dated 18th April, 2019, passed by the Appellate Authority in Appeal No. 2 of 2019 (hereinafter referred to as "the impugned order"), under Section 10 of the Insecticides Act, 1968 and rules 1971 (Act). By way of the impugned order, the Hon'ble Appellate Authority disposed the appeal of the Petitioner on the ground of delay at the stage of admission. It is submitted that, a person who is aggrieved by the decision of the Registration Committee (RC) is required to approach the Appellate Authority by way of an Appeal to be filed under Section 10 of the Insecticides Act, 1968 and relevant Rules of the Insecticides Rules, 1971 within a period of 30 days of the knowledge of such decision. The provisions for appeal as provided under section 10 of the Act are :-

Appeal against non-registration or cancellation.-Any person aggrieved by a decision of the Registration Committee under section 9 may, within a period of thirty days from the date on which the decision is communicated to him, appeal in the prescribed manner and on payment of the prescribed fee to the Central Government whose decision thereon shall be final: Provided that the Central Government may entertain an appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

It is submitted that it is not correct to say that the impugned order is grossly arbitrary, irrational, illegal or suffers from non-application of mind or discriminatory.

7. With reference to paragraph 2 and 3 of the petition, it is stated that the same being a matter of record and hence, no comments are offered at present.

8. With reference to paragraph 4.1 to 4.10 of the petition, it is stated that the same being statutory provisions of the Act, no comments are offered at present. It is stated that the RC constituted U/S 5 of the Act register insecticides after scrutinizing the formulae and verifying the claims made by the manufacturer and

safety to human beings and animals beside on data/information furnished by the applicant on Chemistry, Bioefficacy, Toxicity, Packaging and legal disciplines. For the purpose RC frames scientific guidelines for different categories of registration U/S (9), of the Act. It is submitted that framing and reviewing of guidelines is a dynamic process. The guidelines are displayed on the website of the department, besides decisions/minutes taken by RC from time to time in the form of minutes.

9. With reference to paragraph 4.11 to 4.14 of the petition, it is stated that the same being a matter of procedural aspects of the registration applications considered under different categories of registration, i.e., 9(3B), 9(3) and 9(4) of the Act and hence, no comment is offered at present.

10. With reference to paragraph 4.15 of the petition, it is stated that the Petitioner has narrated the chronology of events and procedural aspects of the registration applications already explained in the appeal filed before the Hon'ble Appellate Authority and reflected in the impugned order under adjudication before the Hon'ble High Court. The impugned order reads as under:-

"CIB&RC strongly opposed the maintainability of the appeal on ground of limitation and has made a submission that an appeal is a statutory right available to an aggrieved person and the same shall ought to be availed by the Appellant. Further CIB&RC contended that the appeal has been filed after an inordinate delay of about one year and five months and the justification provided by the appellant for condonation of delay is not tenable in the eyes of law.

11. After considering the submission made in the appeal the Hon'ble appellate authority decided as under section 10 of the Act it is evident that the appeal should be filed within period of thirty days decision of the RC and present appeal is being filed on 29.01.2019 whereas the impugned decision of the RC taken in its 376th meeting has been displayed on the official Website on 13.07.2017. The justification provided by appellant is that not file the appeal in time as the decision was under challenge before Appellate Authority in certain other appeals filed by other persons and thereafter the same was challenged before the Hon'ble High Court of Delhi. Further the appellant had submitted representation on the issue under consideration. Therefore, in anticipation of a favourable order the appellant could not file the appeal in time as prescribed under section 10 of the Insecticides Act, 1968. In view of aforesaid it is observed that an appeal is statutory remedy to be availed by an aggrieved person strictly adhering to the provisions contained under section 10 of the Insecticides Act, 1968. In my view the contentions put forth by the CIB&RC appears to be acceptable and it appears from records that the contentions put forth by the CIB&RC appears to be acceptable and it appears from records that the appeal had been filed after a delay the justification provided by the appellant does not appear to be acceptable. Based on the conclusion arrived above and without entering into the merits of the matter. I found appeal to be barred by limitation and accordingly disposed off."

12. With reference to paragraph 4.16 to 4.18 of the petition, it is stated that the same being a matter of record and hence, no comments are offered at present.

13. With reference to paragraph 4.19 to 4.23 of the petition, it is submitted that the decision of the RC for withdrawal of guidelines under were TI vs TIM category was in consonance with the policy decision of the Government of India to encourage indigenous manufacturing of Insecticides in the country under 'Make In India' Initiative. Since Indian companies also have capabilities to manufacture pesticides, it was decided to do away with the applications for import of pesticides under the category TI vs TIM (Import of pesticides against already registered pesticides for indigenous manufacture) which are based on relaxed paramters. Since the applications of the petitioner were also under the same category, and hence were closed like that of other similar applications. The decision was not against any individual applicant rather was applicable in rem. Further, the commercial consideration and other related aspects are beyond scope of the Act.

14. With reference to paragraph 4.24 to 4.25 of the petition, it is stated that the same being a matter of record and hence, no comments are offered at present.

15. With reference to paragraph 4.26 to 4.30 of the petition, it is submitted that the right to appeal is a statutory right conferred by a statute to an aggrieved person who is expected under law to prefer an appeal as per the provision enshrined under section

10 of the Insecticides Act, 1968. The provision for condonation of delay if an appeal is preferred after a prescribed of 30 days cannot be invoked in the case is where the delay is in ordinate or a person is enable to show sufficient cause for not filing an appeal beyond a period of the stipulated time. The submission of representation by the petitioner is a matter of record however, in any case a representation cannot be construed as a statutory appeal to be filed in prescribed format as provided under the Act. The Appellate Authority properly applied his mind and had observed that since the appeal of the petitioner was filed with a gross inordinate delay, therefore, the same was disposed of accordingly. Therefore, it is incorrect that the impugned order is arbitrary, illegal, discriminatory or in gross non-application of mind or in violation of any law. Further, the Petitioner cannot submit that a liberal view be taken and delay condoned in terms of the provisions or judgments of the Hon'ble Courts under the provisions of the Limitation Act, when a specific statutory provision with respect to consideration of delay is provided within the statute itself.

16. With reference to paragraph 5 of the petition, it is stated that this Para has already been replied here in above and the decision of the Appellate Authority is in consonance with the statutory provisions of the Act. It is reiterated that the impugned order is neither arbitrary nor illegal nor discriminatory nor in gross non-application of mind nor in violation of any law. Since there was inordinate delay in filing the appeal and beyond prescribed limitation period. The representations,

cannot be substituted as an appeal under the statute (the Act). Hence, the impugned order is in consonance in accordance with law. Since the appeal of the petitioner was filed beyond the limitation period, the same could not be considered on merits.

12. Relying upon the aforesaid averments made in the affidavit in reply, it was pointed out that, the petitioner having not preferred the appeal in time, the petitioner is not entitled to the benefits of the appellate order which was passed subsequently in other similarly situated persons and on this ground only the petition is required to be rejected.

13. In rejoinder, learned Senior Advocate Mr. Trivedi submitted that similarly situated person i.e. M/s. Parijat Industries (I) Pvt. Ltd. is also granted the benefit by the Delhi High Court and the case of the said company was also considered by the RC in the subsequent meeting, pursuant to the order passed by the Delhi High Court.

14. Having considered the rival submissions and having gone through the materials of record, it appears that the petitioner is singled out only on the ground that he filed the appeal late before the appellate authority.

15. Therefore, the only short question which arise for consideration before this Court is whether the delay in preferring the appeal filed by the petitioner ought to have been condoned by the appellate authority considering the representations made by the petitioner after the decision of the RC in its 376th meeting alongwith other similarly situated persons or not.

16. It would therefore be germane to refer to the provision of Section 10 of the Act, 1968, which reads as under:

"10 : Appeal against non-registration or cancellation

Any person aggrieved by a recession of the Registration Committee under Sec. 9 may, within a period of thirty days from the date on which the decision is communicated to him appeal in the prescribed manner and on payment of the prescribed fee to the Central Government whose decision thereon shall be final:

Provided that the Central Government may entertain an appeal after the expiry of the said period, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

17. Considering the above provision of Section 10 of the Act, 1968 which also empowers and provides that the Central Government may entertain an appeal after the expiry of the period prescribed in Section 10 of the Act, 1968 to file an appeal within 30 days from the date of the communication of the decision of the RC.

18. Thus, the appellate authority was empowered to condone the delay, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. It is pertinent to note that as it emerges from the facts of the

case that the petitioner preferred representation before the Central Government on 18.05.2018 and further representation was also made on 14.11.2018 and 08.12.2018. The petitioner has also by letter dated 29.03.2019 submitted before the appellate authority, the reasons for late filing of the appeal. However, without considering the same, the appellate authority solely relying upon the provisions of Section 10 of the Act, 1968, without considering the proviso thereto, dismissed the appeal of the petitioner on the ground of delay, without entering into the merits of the matter.

19. It is well settled principle of law as enunciated by the Supreme Court from time to time and as relied upon on behalf of the petitioner on the various judgments referred to above to the effect that existence of sufficient cause has to be considered by the authority for the purpose of rendering substantial justice.

20. It is also emerges from the record that the same appellate authority in case of similarly situated persons who had preferred the appeal in time held that the appeal was maintainable under Section 10 of the Act, 1968 and considering the oral submissions of such similarly situated persons that they have no grievance or objection on the policy directive and the decisions of RC taken keeping in view the make in India initiative of the Government of India except to the extent that the impugned decisions are made operational prospectively and the pending application of the appellants to be considered as per the guideline in vogue. The appellate authority after considering the submissions directed the RC to review and consider all the pending applications before it as per the guidelines in vogue expeditiously and preferably within the period of two months from the date of the said order.

21. After the aforesaid order passed by the appellate authority, the RC in 389th meeting and subsequent meetings considered the application of the similarly situated persons. The petitioner also made an application to apply the similar realistic to it on 14.11.2018 and 08.12.2018, but the case of the petitioner could not be considered by the RC in view of the fact that the petitioner did not prefer any appeal challenging the decision of the RC at the relevant point of time.

22. It also emerges from the record that the RC has also considered the applications favourably in case of other similarly situated persons and accordingly, the petitioner is being deprived only because the petitioner could not for sufficient cause, as explained by the petitioner in its application before the appellate authority, prefer the appeal.

23. In view of the foregoing reasons, the petition is required to be allowed and is accordingly allowed. The impugned order passed by the appellate authority dated 18.04.2019 passed in Appeal No. 2 of 2019 is hereby quashed and set aside. It would be a futile exercise to remand the matter back to the appellate authority, in view of the fact that the appellate authority itself has directed the RC to review its decisions and consider the pending application as per the guidelines in vague expeditiously. In such circumstances, the matter is remanded back to the

RC to reconsider the application pending before it in its 376th meeting and pass appropriate order as passed in the similarly situated persons by considering the application of the petitioner as per the guidelines in vogue expeditiously and preferably within two months from the date of this order.

24. Rule is therefore made absolute to the aforesaid extent, no order as to costs.