

(2009) 07 DEL CK 0221

In the Delhi High Court

Case No : Writ Petition (C) 10052 of 2009

United Phosphorus Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Insecticides Act, 1968 — Section 10

Citation : (2009) 07 DEL CK 0221

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Rajeev K. Virmani and Mihira Sood, for the Appellant; A.S. Chandhiok, ASG and Shilpa Singh, CGSC, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The petitioner has impugned the order dated 4th May, 2009 passed by Appellate Authority u/s 10 of the Insecticides Act, 1968 (Act for short). The petitioner contends that the impugned order is contrary and re-writes the earlier order dated 2nd March, 2007 passed by the Appellate Authority remanding the matter back to the Registration Committee. He relies upon the following observations made in the order dated 2nd March, 2007 passed by the Appellate Authority:

In view of the fact that the cypermethrin 3% is already in use under the supervised application by PCOs, the product as such is not objectionable, and efficacy and toxicity point of view there are no problems. The only problem apprehended is about the capability/capacity of public to comprehend the precautions proposed to be provided by the appellant and likely carelessness of the public by not adhering to the precautions. It is highly illogical to make a sweeping conclusion about the capability of the public. The precautions envisaged are also not of highly technical in nature and there is no reason to believe that the precautions cannot be followed by the public. The committee has also closed the doors by declaring that no additional data is required. If the

committee apprehends about the leakage of the smoke and likely to affect the health as there are chances of getting exposed to the smoke due to carelessness, additional data can be sought to preclude any harmful effects. Under the above circumstances the decision of the Registration Committee in refusing the permission for use of Cypermethrin 3% as smoke generator by the general public does not stand to reason and the reasons provided are not logical as they are based on sweeping presumptions without any basis, I hereby, under the Section 10 of the insecticides Act, set aside the order of the Registration Committee and remit the request of the appellant for fresh consideration on valid and scientific reasons.

2. The petitioner manufactures Cypermethrin 3%. The said insecticide through Smoke Generator has been permitted to be used through pest control operators only. The petitioner had applied for permission to use the said insecticide by the general public. The Registration Committee considered the said request and concluded in January, 2003 that permission for use of the said insecticide by general public cannot be allowed. The petitioner, thereafter, filed an appeal relying upon report of a Sr. Toxicologist. By order dated 6th August, 2004, the matter was remanded back to the Registration Committee in view of the new evidence in the form of the report of toxicologist.

3. The matter was again examined by the Registering Committee. By their letter dated 15th February, 2006, the request was rejected after merely recording that the product/insecticide cannot be used safely by the general public. On appeal filed by the petitioner, vide order dated 2nd March, 2007, the matter was remanded back to the Registering Committee. The relevant portion of the order dated 2nd March, 2007 relied upon by the petitioner has been quoted above.

4. The Registering Committee thereupon reconsidered the entire matter including the report of Professor K.K. Sharma and Dr. Sangeeta Sharma, Department of Pharmacology, University College of Medical Sciences, Delhi. The said report along with earlier reports/comments of Dr. J.S. Bapna and Dr. D. Kanungo were examined by the Registering Committee in its meeting held on 27th July, 2008 under the chairmanship of Agriculture Commissioner. The following persons/specialists were present in the meeting of the Registering Committee held on 27th July, 2008; Dr. P.S. Chandurkar, Plant Protection Adviser to the Govt. of India, Dr. T.P. Rajendran, ADG (PP), ICAR, Shri Madhava Chakraborty, Indian Instituted of Packaging, Delhi and Dr. (Mrs.) S. Kulshrestha, Secretary, CIB & RC, Dr. P.N. Maji, Dr. S.K. Khurana, Specialist Gr.I, Dr. B.S. Phogat, JD(Bio), Dr. Ravi Prakash, Jt. Dir (PP), Dr. R.M. Shukla, Deputy Directory (Ento), Shri Vipin Bhatnagar, Deputy Director (Chem), Shri. A.K. Bandhopadhyaya, Deputy Directory (Ento), Dr. Subhash Kumar, Agro(H), Dr. Vandana Seth, AD(Chem), Miss Kamlesh Miglani, AD(Chem), Sh. S.K. Verma, SO(CIR-II) and Sh. Niraj Kulshrestha, Assistant(Legal). After due deliberations, the Committee examined and reviewed the whole case afresh and keeping in view the safety aspects and the environment concerns and realizing that that the product/insecticide in question

is used only for Cockroach control, decided to maintain status quo for use of the said insecticide by pest control operators. In other words, the request of the petitioner that the insecticide should be made freely available for use of general public was rejected.

5. Aggrieved, the petitioner filed an appeal, which has been rejected by the Appellate Authority by order dated 4th May, 2009. The Appellate Authority examined the earlier order dated 2nd March, 2007 remanding the matter back and has observed as under:

The issue is whether RC's decision in its 291st meeting held on 28.07.2008 based on a review of the whole case afresh is valid in view of the directions of Appellate Authority given in order dated 02.03. 2007. The Appellate Authority, vide order dated 02.03.2007, had remitted the case to RC for fresh consideration on valid and scientific reasons also observing that the Registration Committee's decision in refusing the permission for use of Cypermethrin 3% as smoke generator by the general public did not stand to reason as the reasons provided, based as it was on sweeping presumptions, was not logical. RC appointed an Expert Group headed by the retired Director of National Institute of Occupational Health. The Group heard UPL and decided that the use of the product in Indian conditions will result in health concerns among the population exposed. Based on inputs from the Expert Group, RC sought additional information from UPL and based on the material available it took the impugned decision dated 28.07.2008. The appellant's contention is that the issue of toxicity of the product and the capacity of general public to use it had been settled by Appellate Authority on 02.03.2007 and were not open to review by RC. This, however, would be too narrow an interpretation of the order dated 02.03.2008 in which the Appellate Authority, while making certain observations doubting the conclusions reached by RC had "remitted the case to RC for fresh consideration on valid and scientific reasons". This operative part makes it evident that what was remitted to RC was the "case" not necessarily only a part of it. Such fresh consideration had to be on "valid and scientific reasons". Viewed in this context, the process of review of the case by RC, including appointment of an expert Group, is in order. RC considered data of health monitoring study by Institute of Human Behavior & Allied Sciences and concluded that it could not be applied safely in case in case vulnerable strata of society such as sick people, pregnant women, old persons and children. RC took note that the smoke generated by the product contains potentially toxic chemicals. It considered UPL's reply in its 290th meeting on 05.06.2008. Therefore, there is no reason to believe that RC has not followed Appellate Authority's direction "for fresh consideration on valid and scientific reasons".

7. While the appellant is free to controvert the scientific basis of findings of RC, it must be kept in mind that the issue at hand concerns public safety. Insecticides and inherently toxic substances and the entire system under the Insecticides Act, 1968 has been devised to regulate their use to prevent risk to human beings or

animals. What must take precedence, therefore, is not to incontrovertibility of scientific reasoning disallowing use of the product in question by general public. The review of the case by RC brings out that questions remain on the latter. Therefore, the appeal is dismissed.

(emphasis supplied)

6. It is not possible to agree with the contention of the petitioner that order dated 2nd March, 2007 had closed issue and the hands of the Registering Committee were tied. The matter was remanded back to the Registering Committee to examine whether the product/insecticide should be made available to the general public keeping in view of the expert reports/evidence as well as precautions which are required to be taken. It was observed that the Committee should not close their minds and take into account the additional data, if required. The fact that the matter was remanded back shows that the Appellate Authority did not consider that it was a fit case in which on the basis of findings recorded permission should be granted for use of Cypermethrin 3% Smoke Generator by the general public. Otherwise there was no cause for remand. The Appellate Authority, however, cautioned the Registering Committee not to make general observations on the basis of presumptions. These aspect have been kept in mind by both the Registering Committee in its meeting held on 28th July, 2008 and the by the Appellate Authority in its order dated 4th May, 2009. Observations and findings of the Appellate Authority in the order dated 4th May, 2009 are correct. In such cases, safety aspects and environment have to be given due and required importance. Public safety is the primary concern. This aspect has been kept in mind by the Registering Committee in its meeting held on 28th July, 2008 as is clear from the minutes. They have held that the product/insecticide in question is used for Cockroache control and public safety does not permit uncontrolled use of the said product/drug by the general public. The Registering Committee consisted of experts and specialists, who are aware of the chemicals, their harmful effect and precautions which are required.

7. Counsel for the petitioner has drawn my attention to the report of Professor K.K. Sharma and Dr. Sangeeta Sharma. The report refers to health monitoring study conducted by them to assess the safety profile of the insecticide. As per the report itself, the volunteers vacated the treatment area immediately leaving doors and windows closed for two hours and thereafter the area was ventilated thoroughly by keeping doors and windows open for six hours continuously. The volunteers were asked to wash hands and exposed skin thoroughly before meals and after use. Thus precautions were taken while conducting the said study. As per the comments of Dr. J.S. Bapna, Cypermethrin 3% Smoke Generator is safe for use with no possible occupational health hazard, if directions for use are strictly followed. Directions for use and precautions mentioned by him in his comments are as under:

Directions for Use

1. Use in closed room, avoid leakage.
2. Keep doors and windows closed throughout the operation.
3. Before ignition, ensure that room is vacated of people and animals. Upon lighting leave the room and close the door.
4. Cover utensils, foodstuffs, clothing etc.
5. Do not eat, drink, chew of smoke during application.
6. After at least 2 hours return to the room and open all the windows to ventilate the room for about half an hour to disperse the left over smoke.
7. Destroy the used generator and bury it away from human habitation and water source.

Precautions:

1. Store the product in cool and dry place, away from any burning flame and foodstuff at a safe place out of reach of children.
2. Do not reuse the empty used container for storing any food article.
3. Do not apply to surfaces on which food or feed is stored, prepared or eaten.
4. Wash hands and exposed skin after use.

READ ALL SAFETY OPERATIONS AND PRECAUTIONS BEFORE USE

First Aid & Antidote:

If accidental exposure occurs, the instructions as under should be follows:

- Wash contaminated skin and irrigate eyes with plenty of water.
- Remove the person to fresh air.
- Call the physician immediately or shift the person to nearby health care facility

8. Similarly ,Dr. D. Kanungo in his comments has mentioned that expert group consisting of Dr. Y.K. Gupta, Dr. Usha Gupta and Dr. Sandhya Kulshrestha had considered the feasibility of extending use of product/insecticide by the general public. The said group reiterated the view that product/insecticide should be used by pest control operators and should not be made available to general public. The safety operations and precautions required to be taken as per the said report are as follows:

Safety operations:

- a) Use in close room, avoid leaking.
- b) Keeps doors and windows closed, through out the operation.
- c) Before ignition, ensure that room is vacated of people and animals. Upon

lighting leave the room and close the door.

d) Cover utensils, foodstuffs, clothing etc.

e) Do not eat, drink, chew of smoke during application.

f) After at least 2 hours return to the room and open all the windows to ventilate the room for about half an hour to disperse the left over smoke.

g) Destroy the used generator and bury it away from human habitation and water source. Precautions:

a) Store the product in cool and dry place, away from any burning flame and foodstuff at a safe place out of reach of children.

b) Do not reuse the empty used container for storing any food article.

c) Do not apply to surfaces on which food or feed is stored, prepared or eaten.

d) Wash hands and exposed skin after use.

9. The comments state that the smoke generated is hazardous if inhaled by individuals as it contains Carbon Dioxide and Carbon Monoxide apart from other ingredients. The exact details of the said gases along with the P.P. levels at different time periods after use of the same insecticide by smoke generator have been mentioned in the said comments.

10. Keeping in view the larger public interest and public safety as well as the fact that majority of the Indians are illiterate or partly literate, who may not fully understand the risks involved and may ignore safety precautions, I do not find any error in the impugned order dated 4th May, 2009. I do not think it is a fit case which requires interference of this Court while exercising discretionary power of judicial review.

11. The writ petition has no merit, the same is dismissed, in limine.