

**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)**

**THURSDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR**

**PRESENT
THE HONOURABLE SMT JUSTICE V.SUJATHA**

WRIT PETITION NO: 9689 OF 2024



Between:

M/s. Bhaskar Agro Chemicals Limited, Rep. by its Authorised Signatory,
P. Praveen Kumar S/o. P. Pattabhi Rama Rao, aged 47 years, R/o. No.
904, Lanco Hills, Sy.No.201, Near DPS Public School, Manikonda,
Puppalaguda, Ranga Reddy District-500 089, Telangana State. Factory
at D.No. 94/1, Toopranpet Village, Choutuppal Mandal, Yadadri-
Bhuvanagiri Distirct-508 252, Telangana State. Office at Plot No.73, 3rd
Floor, Western Homes, Kavuri Hills, Phase-II, Jubilee Hills, Hyderabad-
500 033, Telangana State. Sale point in AP at No. 21-121/8, Plot No.
32, Layout 25/81, Vijayawada Rural, Gollapudi Village, NTR District-
521225, Andhra Pradesh State.

...Petitioner

AND

1. The State of Andhra Pradesh, Rep. by its Principal Secretary,
Agriculture And Co-operation Dept. Secretariat, Velagapudi, Amaravati,
Guntur District.
2. The Commissioner And Director of Agriculture, State of Andhra
Pradesh, Near Rythu Bazar, Chuttugunta, Guntur District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in
the circumstances stated in the affidavit filed therewith, the High Court may
be pleased to issue a Writ, Order or Direction, more particularly one in the
nature of Writ of Mandamus declaring the action of the 2nd Respondent in
interfering with sale and distribution of Bio-products/Bio-Stimulants of

petitioner-Company, viz., Seawid, Nofil, Prozate, Pro bent, Celial, Mibial, Hucim And Fulcim, by issuing Memo No. PP.II(1)2085/2005, dated 21-01-2006 and Letter No.PP.11(1)2085/2005, dated 21-01-2006 and in the absence of Notification prescribing standards and not included in Schedule-VI being illegal, arbitrary, unconstitutional, and direct the 2nd respondent not to interfere with in any manner in selling and distribution of Bio-products/Bio-Stimulants including from the licensed premises of the dealers/stockists under the Insecticides Act, 1968 and the Fertilizers Control (Order) Act, 1985.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to issue a Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in interfering with sale and distribution of Bio-products/Bio-Stimulants of petitioner-Company, viz., Seawid, Nofil, Prozate, Pro bent, Celial, Mibial, Hucim And Fulcim, including from the licensed premises of the dealers/stockists under the Insecticides Act, 1968 and the Fertilizers Control (Order) Act, 1985.

Counsel for the Petitioner: SMT B V APARNA LAKSHMI

Counsel for the Respondents: GP FOR AGRICULTURE

The Court made the following order:

ORDER:

The present Writ Petition came to be filed under Article 226 of the Constitution of India seeking the following relief:-

"...to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in interfering with sale and distribution of Bioproducts/BioStimulants of petitioner-Company, viz., Seawid, Nofil, Prozate, Pro bent, Celial, Mibial, Hucim And Fulcim, by issuing Memo No.PP.II(1)2085/2005, dated 21.01.2006 and Letter No.PP.II(1)2085/2005 dated 21.01.2006 and in the absence of Notification prescribing standards and not included in Schedule-VI, as being illegal, arbitrary, unconstitutional and direct the 2nd respondent not to interfere with in any manner in selling and distribution of Bio-products/Bio-Stimulants including from the licensed premises of the dealers/stockists under the Insecticides Act, 1968 and the Fertilizers Control (Order) Act, 1985....."

2. Learned counsel for the petitioner and the learned Government Pleader for Agriculture appearing for respondents submitted that the issue involved in this writ petition is squarely covered by the order of this Court passed in W.P.No.13169 of 2021, dated 26.07.2021.
3. In view of the submission of the learned counsel for the petitioner and the learned Government Pleader for Agriculture, this Writ Petition is disposed of in terms of the order passed by this Court in W.P No.13169 of 2021, dated 26.07.2021, directing the respondents to follow the provisions and the guidelines stipulated in SO No.882(E), dated 23.02.2021 and SO No.2333, dated 14.06.2021, while dealing with the products of the petitioner-firm and interfering with the activity of the petitioner-firm, including the licensed premises of the petitioner-firm and its dealers/stockiests, who are dealing with the subject products. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

The Registry is directed to enclose a copy of the order in W.P No.13169 of 2021, dated 26.07.2021, to this order.

**Sd/- K.TATA RAO
DEPUTY REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Secretary, Agriculture And Co-operation Dept., State of Andhra Pradesh, Secretariat, Velagapudi, Amaravati, Guntur District.
2. The Commissioner And Director of Agriculture, State of Andhra Pradesh, Near Rythu Bazar, Chuttugunta, Guntur District.
3. One CC to Smt B V Aparna Lakshmi, Advocate [OPUC]
4. Two CCs to GP for Agriculture, High Court of Andhra Pradesh. [OUT]
5. Two CD Copies
(Along with a copy of the order dated 26.07.2021 in WP.No.13169 of 2021)
RAM

HIGH COURT

DATED:25/04/2024

ORDER

WP.No.9689 of 2024



**DISPOSING OF THE WP
WITHOUT COSTS**

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.13169 of 2021

Order:

This Writ Petition is filed to declare the action of the respondents in interfering with the production, sale and distribution of petitioner's Bio-Products, as illegal and arbitrary.

The case of the petitioner firm is that it has engaged in manufacture, sale and distribution of Bio-Products such as; James bond, More 69, Vinzyme-L, Vinzyme-G, Khazana, Supreme, Warrior, Victor, Victore Plus, Vajhara, Vijaya-99, Jeel-9, Vibha, Vishist, Dandi, Fooster, Medal, Vijaya-999 and V. Prom 5, Vijaya CMS, Vejatha, CMS Grunavals, Vasudhaa, Dharani, Viraat CMS, Tejal, Bhairav, Dhaanya, Dharmavira, Dhaathri, Dhaarmik, Tejaswi, Sonakshi, Dhanishta, Daksh, Dhamman, Ekachakra, Ekaveera, Ekaveera plus, Garjan, Gandeer, Garuda, Jaagruth, Jaguar, Jamindar, Janzeer, Jeevan Mitra, Kanchan, Keerthi, Kingzymme (Liquit), Kingzymme (Granules), Mokshaa, Mothi, Pasidi-6, Terminator-11, Terminator Plus, Tejas, Tejaswi, Temper, Saviour, Tejasplus, Heera, Sona, Eesha, Bhamini, Mohini, Bhaadra, Bahula, Janani, Jago, Bhaagya, Gayathree, Jeett, Ekalavya, Tejas Grand, Avenger, VAM-Gold Viswajit, Tejas Plus Extra, Secure, Gardian, Garjan, Visthaar, Prudhavi; the said products are called as plant growth promoters and Bio Organic Fertilizers, as the said products are manufactured without usage of any toxic chemicals unlike the regular pesticides and insecticides; they are naturally derived and used as crop stimulants and growth promoters and hence the said products will not fall under the provisions of the Fertilizer (Control) Order 1985 or Insecticides Act, 1968; as the products of the petitioner do not fall under the ambit of either the Fertilizer (Control) Order, 1985 or Insecticides Act, the same can be sold

without there being any marketing permission under the Fertilizer (Control) Order, 1985 and Insecticides Act; that in spite of the same, the respondents are obstructing the sale of the products; there is no prohibition on sticking on dealers who were granted a license under Section 13 of the Insecticides Act, 1968 read with Rule 10 of the Insecticides Rules, 1971 and the District Agricultural Officers of Kurnool, Guntur, Krishna, Chittoor, Anantapur, East Godavari, West Godavari and Kadapa are interfering and obstructing the business of the petitioner without assigning any reasons; the similarly situated firms filed W.P.No.25293 of 2014 and batch and after disposal of the said Writ Petition and batch on 10.07.2015, the matters were carried before the Division Bench by way of Writ Appeal Nos.1122 and 1136 of 2016 and the said order was confirmed with certain modifications; hence, the Writ Petition.

Writ Petition No.25293 of 2014 and batch were filed challenging the action of the respondents therein in interfering with the manufacture and sale of bio-products by issuing a memo dated 21.01.2006. The sum and substance of the said memo is that certain products are not covered under the Insecticides Act, 1968 and the stocking/exhibiting for sale from the licensed premises is not permitted. Writ Petition No.25293 of 2014 and batch were filed on the ground that when the activity is not covered by the provisions of the Act, the respondent authorities cannot interfere with the activities of the petitioners therein and the said Writ Petitions were disposed of with the following directions.

"19. Keeping in view the above facts and circumstances, all these writ petitions are disposed of with the following directions:

- i) The petitioners shall not deal with bio-products without maintaining proper packing and marking of the product. The packing of bio-products shall contain the ingredients included in the product, analytical

procedure and their percentage. This enables the authority to verify the contents of the product.

- ii) The manufacturer of every bio-product should intimate the concerned Commissioner of Agriculture with regard to the manufacturing activity undertaken by it with name of the product, process and its content. The Commissioner of Agriculture need not grant any permission and mere information from the manufacturer is enough for this purpose. The Commissioner of Agriculture shall issue an acknowledgement of such information.
- iii) The dealer of bio-products should have the information with regard to the source of purchase of bio-products and shall maintain a register for the said purpose in order to enable the authorities to inspect the stock from time to time.
- iv) It is for the authorities to inspect the bio-products in the location of the manufacturer prior to its despatch to the dealer or in the location of the dealer and take sample thereof in order to verify whether any such product contains harmful substances attracting the provisions of Insecticides Act, 1968 or used as a fertilizer violating the provisions of Fertilizer (Control) Order, 1985. The sample of the product shall be collected from the said source by the authorities under the signature of the persons dealing with bio-products and the authority who is collecting for the purpose of sending it to the appropriate Laboratory in order to verify the contents of the said product.
- v) From a copy of the report if any prohibited substance is found by the authority, the authority shall issue a notice along with a copy of the report to the persons dealing with the product and take necessary action against such persons either under the provisions of Insecticides Act, 1968 or Fertilizer (Control) Order, 1985. After receipt of the explanation from the person,

- the authority can pass appropriate orders under the provisions of the said enactments.
- vi) The report from the concerned Laboratory shall be obtained as expeditiously as possible, preferably not later than a week from the date of collection of the sample and till such time, the concerned authority can withhold manufacture and sale of bio-product. Against the order passed by the authority who collected sample, the aggrieved party can file an appeal to the higher authority as provided in the above provisions if so advised.
 - vii) The collection of samples and the process of passing order shall not be resorted to routinely but should be on credible information that the product is causing damage to the public agriculture activity and on prima facie satisfaction of such information.
 - viii) The respondents shall not violate the law and resort to unnecessary harassment of the manufacturers or dealers in a routine manner.
 - ix) In case of violation of the above directions, it is open to the petitioners to bring it to the notice of the higher authorities of the action of the officers violating the directions, and the higher authority to the authority interfering with the activity of the petitioners shall dispose of the representations with utmost expediency and not later than ten days from the receipt thereof.

Challenging the said order, the State Government has preferred Writ Appeals bearing W.A.Nos.1122 and 1136 of 2016, which were disposed of by the Division Bench of the combined High Court on 03.11.2016, observing as follows.

"As has been rightly held by the Learned Single Judge, the fundamental right to carry on business under Article 19(1)(g) of the Constitution of India can only be restricted in accordance with Article 19(6) thereof. While the Act requires a licence to be obtained for storing and selling insecticides, no

provision, either in the Act or the Rules made thereunder, has been brought to our notice which prohibit a licensee from selling other products, in addition to insecticides, in the very same premises. The impugned memo, whereby dealers were prohibited from stocking, exhibiting and selling bio-products not covered under the Act, from the premises for which a license has been granted under the Act and the Rules, is not authorised either by any of the provisions of the Act or the Rules made thereunder.

The fact, however, remains that though the guidelines, in the order under appeal, have been stipulated in the larger public interest of protecting farmers, some of the conditions prescribed therein appear to run contrary to the provisions of the Act. As the Learned Government Pleader for Agriculture has rightly pointed out Clause 6 of the guidelines, which requires a report from the concerned laboratory to be obtained not later than a week from the date of collection of the sample, does appear to fall foul of the time limit of one month specified in Section 21(1)(d) of the Act. Likewise Clause 7, which requires credible information to form the basis of collection of a sample, may well be construed as restricting the power, conferred under Section 21(1)(d) of the Act, on the Insecticide Inspector to withhold stocks if he has reason to believe that insecticides are being distributed, sold or used in contravention of the provisions of the Act and the Rules made thereunder.

While we are in complete agreement with the submission of Sri S.Niranjan Reddy, Learned Senior Counsel appearing on behalf of the respondent-writ petitioner, that there cannot be an omnibus categorisation, of all bio-products as insecticides, for the purpose of taking action under the Act, the grounds on which the Insecticide Inspector has reason to believe, that insecticides are being sold in contravention of the provisions of the Act and the Rules, would depend upon the facts of each case, and cannot be circumscribed by way of guidelines issued by this Court. The guidelines prescribed, in the order under appeal, can only supplement and not supplant

the law, and would remain in force only till appropriate legislation – either plenary or subordinate – is made in this regard. Suffice it, while making it clear that there cannot be an omnibus categorisation of all bio-products as insecticides for taking action against the dealers of those goods, to also make it clear that the guidelines, prescribed in the order under appeal, shall be in addition to, and not in derogation of, the powers conferred on the concerned authorities under the Act and the Rules. We may not be understood to have expressed any opinion on whether or not any of these bio-products are insecticides, as these are matters which the authorities concerned are required to examine in accordance with the provisions of the Act, the Rules made thereunder, and the guidelines stipulated in the order under appeal.

The order under appeal is modified to the extent indicated hereinabove, and the Writ Appeals are disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs."

Counter affidavit is filed by the second respondent stating, *inter alia*, that the petitioner has not submitted any bio-efficacy trial reports and results pertaining to non-toxicity and that the Ministry of Agriculture and Farmers Welfare, Government of India has issued a Gazette notification vide SO No.882(E), dated 23.02.2021, under Fertilizer (Inorganic, Organic or Mixed) (Control) Amendment Order, 2021 duly including the Biostimulants in Schedule VI of Fertilizer (Inorganic, Organic or Mixed) (Control) Order, 1985. The Division Bench of the combined High Court observed that the guidelines prescribed in the order under appeal would remain in force only till appropriate legislation – either plenary or subordinate – is made in that regard and pursuant to the said Division Bench order and to regulate the manufacturing and marketing of bio-products particularly with fake and bogus addresses and to prevent spurious products to the farmers the Government issued G.O.Ms.No.18, Agriculture & Cooperation (AGRI.III)

Department, dated 10.03.2017 and sub-clause (4) of Clause 3 of the said SO No.882(E) reads as follows.

"(4) Notwithstanding anything contained in this order, any person manufacturing a biostimulant as on the date of publication of this order for which no standards have been specified, may, subject to making an application for grant of provisional registration under sub-clause (5), continue to manufacture for sale, sell, offer for sale, stock or exhibit such biostimulant for a period of two years from the date of publication of this order."

The said time limits were extended vide SO No.2333, dated 14.06.2021, which reads as follows.

"In exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby makes the following order further to amend the Fertiliser (Inorganic, Organic or Mixed) (Control) Order, 1985, namely:-

1. (1) This order may be called the Fertiliser (Inorganic, Organic or Mixed) (Control) Amendment Order, 2021.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the Fertiliser (Inorganic, Organic or Mixed) (Control) Order, 1985,-

(i) In clause 20(c), in sub-clause (5), for the words "within a period of six months from the date of publication of this order", the words, figure and letters "within 31st March, 2022" shall be substituted.

(ii) In 'Form G-3, for the words, figures and letters "up to....day of August, 2022", the words, figures and letters "up to 22nd day of February, 2023" shall be substituted."

In view of the categorical extension of time limits in SO No.2333, dated 14.06.2021, the respondents are directed to follow the provisions and the guidelines stipulated in SO No.882(E), dated 23.02.2021 and SO No.2333,

dated 14.06.2021, while dealing with the products of the petitioner and interfering with the activity of the petitioner who is dealing with the subject products.

The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

Date:26.07.2021

Nsr

KONGARA VIJAYA LAKSHMI, J