

**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

**JUDICIAL DEPARTMENT**

**W.P. No.3941/2020**

M/s Ahmed & Kamran Traders (Pvt.) Ltd.

*versus*

Federation of Pakistan & 05 others

**W.P. No.317/2021**

M/s Ahmed & Kamran Traders (Pvt.) Ltd.

*versus*

Federation of Pakistan & 02 others

*and*

**W.P. No.332/2021**

M/s Ahmed & Kamran Traders (Pvt.) Ltd.

*versus*

Federation of Pakistan & another

Petitioner by:

Malik Shahid Mehmood Kandwal,  
Advocate alongwith representative  
Naveed Iqbal.

Respondents by:

Raja Muhammad Aftab Ahmad, AAG.

Mr. Zulfiqar Khalid Malooka,  
Advocate for Respondent No.4 (M/s  
National Chemicals)

Mian Muhammad Zafar Iqbal,  
Advocate for Respondent No.6 (M/s  
Pantagon Fumigation Services)

Muhammad Sohail Shahzad, Director  
and Syed Muzammil Hussain,  
Entomologist, on behalf of Department  
of Plant Protection.

Date of Decision:

12.02.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through this single judgment, I intend to decide the captioned writ petitions having involved similar parties, facts and question of law.

2. Brief and consolidated facts are that M/s Ahmed & Kamran Traders (Pvt.) Ltd. being registered company with SECP applied to the Department of Plant Protection (*Respondent No.2*) for registration of Methyl Bromide 98% + Chloropicrin 2%, whereby registration certificate was granted to the petitioner on 21.10.2020. Such issuance of registration certificate resulted into enmity with M/s National Chemicals (*Respondent No.4*) being the sole importer of Methyl Bromide from China and resultantly, *Respondent No.4* moved an application for cancellation of registration certificate issued in favour of the petitioner, as such, petitioner apprehends that *Respondent No.2* might cancel the registration certificate. Likewise, the petitioner through captioned W.P. No.332/2021 claimed that he has imported Methyl Bromide from China, which has been cleared by the Custom Authorities in Pakistan, but the same is not being released due to non-issuance of NOC by the Department of Plant Protection. Similarly, the petitioner in captioned W.P. No.317/2021 has assailed the notification dated 15.01.2021, issued by Ministry of National Food Security & Research, whereby Allah Ditta Abid, Director Technical (BPS-19) of the Department of Plant Protection has been assigned with current charge of the post of Director General (BPS-20) for three (03) months. Hence, the captioned writ petitions.

3. Learned counsel for petitioner contends that the petitioner was granted registration certificate after meeting all the codal formalities and no illegality has ever been committed by the petitioner; that the petitioner has invested a huge amount in the import of Methyl Bromide from China, but *Respondent No.2*, while acting on the application filed by *Respondent No.4*, could possibly deprive the petitioner of the lawfully availed

registration certificate; that non-issuance of the NOC by Respondent No.2 with respect to the imported chemical substance, the petitioner has also filed an application to the Secretary, National Food Security & Research on 20.01.2021, but of no avail, therefore, respondents may be directed to issue Endorsement of Pre-shipment Inspection (PSI) report from clearance of consignment from the custom authorities. Learned counsel for petitioner further contends that Allah Ditta Abid, Director Technical (BPS-19) is not authorized to adjudicate upon and decide the questions relating to registration or issuance of NOC by the Plant Protection Department as he has been assigned the current charge of Director General (BPS-20), therefore, he is not permitted to pass any order under the law, except day to day affairs in a routine manner.

4. Conversely, learned AAG as well as learned counsel for respondents No.4 & 6 opposed the filing of instant writ petition on the grounds that the petitioner has obtained registration of Methyl Bromide 98% + Chloropicrin 2% through Form-16 mode of registration, instead of Form-1 mode of registration; that all these writ petitions are not maintainable as the relief sought by the petitioner is specifically against the issuance of NOC by the Department of Plant Protection, Karachi and even the issue relating to cancellation of registration certificate could only be settled by the said department at Karachi, which is not within the territorial jurisdiction of this Court; that the petitioner Company has also assailed the assumption of current charge of the post of Director General (BPS-20) by Allah Ditta Abid (BPS-19) in the Department of Plant Protection, Karachi, which also is not within the purview of this Court in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, even otherwise,

Methyl Bromide 98% + Chloropicrin 2% cannot be imported through Form-16 mode of registration as the Federal Government has not notified the mixture of said chemical substance in official gazette, per se, till such notification, import of said substance could only be allowed through Form-1 mode of registration.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner Ahmad & Kamran Traders (Pvt.) Ltd. is a company dealing with the import of different chemicals and has been granted import permission of pesticide, not having trade name, vide Certificate No.9610, dated 21.10.2020, for import of pesticide namely Methyl Bromide with formulation registered (Methyl Bromide 98% + Chloropicrin 2%) (Appendix-A), vide certificate issued by the Ministry of National Food Security & Research, Government of Pakistan. The petitioner company has imported the said pesticide by way of Form-16 in terms of the Agricultural Pesticide Rules, 1973 (*APR, 1973*), however after the clearance by the custom department at Karachi, the endorsement of Pre-Shipment Inspection has not been generated as required for release of imported pesticide in terms of Agricultural Pesticide Ordinance, 1971 (*APO, 1971*). The National Chemicals / Respondent No.4 as well as one of the distributor, Mir Muhammad Tahir Zehri of "Tahir Fumigation Experts" filed different applications to the Department of Plant Protection against the petitioner for obtaining the import permission of pesticide through illegal mechanism and in violation of the APO, 1971.

7. In compliance of notices issued by this Court to the respondents, Muhammad Sohail Shahzad/Director and Syed Muzammil Hussain /

Entomologist of Department of Plant Protection put in appearance and elaborated the entire procedure of registration that there are different ways for registration under Section 4 of APO, 1971 i.e. Form-1, Form-16 and Form-17, as such, the petitioner has been registered in terms of procedure provided in Form-16 read with Rule 9 of the APR, 1973, whereby Federal Government has to issue notification of pesticides in official gazette after its recommendation by the Sub-Committee of the Agricultural Pesticides Technical Advisory Committee (APTAC), who firstly determines and evaluate the pesticides registered on Form-1 normally based on expiry of their patents, brand registration and lack of their adverse effect on the environment and natural resources etc., whereafter the said Sub-Committee recommends the APTAC to propose the Federal Government for their notification in official gazette to register and import such pesticide without undergoing registration process provided under Section 5 of APO, 1971 read with Rules 3 & 4 of APR, 1973 and instead as per Rule 9 of the APR, 1973. Subsequently, APTAC, if satisfied with the commendation of Sub-Committee of APTAC, proposes to the Federal Government for notification of such pesticide in the official gazette, and consequently, the Federal Government, if agrees with the proposal of APTAC, notifies the pesticides in the official gazette to register and import such pesticides on Form-16, per se, pursuant to such notification, the notified pesticide can be imported by any person through Form-16 mode of registration.

8. The representatives of the respondent department present before this Court further stated that M/s National Chemicals / respondent No.4 obtained registration of Methyl Bromide 98% + Chloropicrin 2% through Form-1 mode of registration, while the petitioner managed to obtain

registration of Methyl Bromide 98% + Chloropicrin 2% through Form-16 mode of registration, whereas it cannot be imported through Form-16 mode of registration as the Federal Government has never notified this mixture pesticide in the official gazette for registration and import on Form-16.

9. The Director, Department of Plant Protection has been confronted as to why the Department of Plant Protection has issued the registration to the petitioner company on Form-16 with import permission of Methyl Bromide 98% + Chloropicrin 2%, vide certificate dated 21.10.2020, whereby it has specifically been contended by the learned AAG as well as by the Director, Department of Plant Protection that the previous official on the said position had misused its authority and issued such certificate of registration, which is not permissible under the law and as such, the entire issue has been raised due to the said illegal registration. He further contended that Department of Plant Protection has issued a show cause notice to the petitioner Company, whereby the petitioner has put in appearance and all relevant material has been confronted to the petitioner by the Department of Plant Protection, Karachi, whereafter office order dated 02.02.2021 has been issued at Karachi and the registration has been cancelled.

10. On the other hand, the petitioner contends that his registration certificate has been withdrawn illegally, even otherwise, he has imported Methyl Bromide 98% + Chloropicrin 2% when its registration was intact, therefore, non-endorsement is an illegal act on the part of Department of Plant Protection.

11. While considering the above mentioned background, this Court has confronted the petitioner regarding maintainability of all these writ petitions, especially when the license was given by the Director General, Department of Plant Protection at Karachi and it has been cancelled after going through the relevant record under the law, vide office order 02.02.2021 at Jinnah Avenue, Malir, Karachi, whereby petitioner contended that Ministry of National Food Security & Research is situated at Islamabad being controlling Ministry and as such, all writ petitions are competent. In order to resolve the controversy, it is necessary to take up the question of territorial jurisdiction at the first instance for exercise of constitutional jurisdiction.

12. There is no denial that Methyl Bromide 98% + Chloropicrin 2% was imported at Karachi by the petitioner, regarding which the Director, Department of Plant Protection has to issue endorsement to a registered importer after Pre-Shipment Inspection at Karachi, as such, all the acts required to be done or challenged before this Court fall within the territorial jurisdiction of Karachi. This aspect demonstrates that the dominant cause available to the petitioner is outside the jurisdiction of this Court and as such, this Court cannot issue any writ to such an authority, who does not fall within the territorial jurisdiction of this Court. In this regard, this Court is guided by the settled principles of law while relying upon PLD 2017 SC 53 (Province of Punjab through Secretary, Government of Punjab v. M/s Muhammad Tufail and Company), 2012 PTD 1869 Lahore (M/s Sethi and Sethi Sons v. FOP) and 2016 PCr.LJ 1056 Islamabad (Jamshoro Joint Venture Ltd. v. Federation of Pakistan).

13. Besides the above referred legal position, the petitioner has also challenged the very appointment of Allah Ditta Abid, Director Technical BPS-19, who has been assigned with current charge of the post of D.G. Department of Plant Protection with the contention that he is acting beyond the legal authority. Perusal of captioned W.P. No.317/2021 discloses the personal vengeance and malafide on the part of petitioner, though the said writ petition relates to the territorial jurisdiction at Karachi and as such, this Court is not in a position to issue or decide the question of current charge which itself is for three months' period or till availability of a regular incumbent and even Muhammad Sohail Shahzad, in attendance on behalf of respondent department, contended that a regular incumbent is likely to take position as seniors were attending their departmental courses, per se, he and his other colleagues have now again resumed the duties after completion of course, therefore, instant writ petition is also not maintainable.

14. At last, it is important to mention here that one of the company, Tahir Fumigation Experts, through their authorized person Mir Muhammad Tahir Zehri, has initially filed Suit No.136/2021 "*Mir Muhammad Tahir Zehri vs. Federation of Pakistan*", in which the present petitioner has been arrayed as Defendant No.10, whereby the Sindh High Court through CMA No.948/2021 & CMA No.949/2021 has passed the restraining order against the petitioner company and others to import the chemical substance of Methyl Bromide 98% + Chloropicrin 2% and / or to sale, market or to distribute the same. This aspect further highlight that the Sindh High Court has already exercised the jurisdiction and restraining order is in field, therefore, it is not appropriate to pass any order qua the



exercise of jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

15. In view of above, the captioned writ petitions are not competent, therefore, same are hereby **DISMISSED**. The petitioner is directed to approach the competent court at Karachi for adjudication of his issues.

16. Before parting with this judgment, this Court cannot turn blind eye to the dereliction of duties on the part of officials of Department of Plant Protection, who issued the import licence in violation of Agricultural Pesticide Rules, 1973, therefore, the Secretary, Ministry of National Food Security & Research, Government of Pakistan is directed to initiate an inquiry qua the affairs of issuance of import license whether on Form-1, Form-16 or Form-17 process and shall proceed under the relevant law / rules against the delinquent officials followed by recommendation of action for misuse of authority under the relevant law.

17. During the course of hearing, Naveed Iqbal, representative of the Petitioner company was using his mobile phone for recording of court proceedings, despite restriction and orders of the Court, therefore, Show Cause Notice has been issued, in response to the same Naveed Iqbal has submitted written apology in result whereof, fine of Rs.20,000/- was imposed to be deposited in SOS Village, Islamabad. Office is directed to release the phone after clearance/formatting the same, subject to deposit of receipt of payment of Rs.20,000/- from SOS Village, Islamabad.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**