

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Amin-ud-Din Khan, JJ

PROVINCE OF PUNJAB through Secretary Agriculture Department, Lahore---Petitioner

Versus

SALEEM IJAZ and others---Respondents

C.P. No. 1336-L of 2021 to C.P. 1340-L of 2021, decided on 6th January, 2023.

(Against the consolidated order of Lahore High Court, Lahore dated 14.04.2021, passed in W.P. No. 121 of 2021/BWP, etc.)

(a) Agricultural Pesticides Ordinance (II of 1971)---

---Ss. 13, 16 & 17---Pakistan National Accreditation Council Act (VI of 2017), Ss. 4(a) & 4(d)---Punjab Agricultural Pesticides Rules, 2018, R. 22---Pesticide laboratory---Accreditation and certification---Rule 22 of the Punjab Agricultural Pesticides Rules, 2018 ('the 2018 Rules'), vires of---Laboratories (in Pakistan) can only be accredited or certified by Pakistan National Accreditation Council ("PNAC")---Rule 22 of the 2018 Rules to the extent where it requires that the pesticide laboratory shall be duly certified by ISO is not reconcilable with Section 13 of the Agricultural Pesticides Ordinance, 1971, and section 4 of the Pakistan National Accreditation Council Act, 2017 ('the 2017 Act')---Applying the principle of reading down, the Supreme Court saved the legality of Rule 22 of the 2018 Rules by directing that that the phrase "the pesticide laboratory shall be duly certified by International Organizations for Standardization (ISO)" is to be read down to mean that the pesticide laboratory shall follow the national and international standards as accredited by Pakistan National Accreditation Council ("PNAC") under 2017 Act.

Rule 22 of the Punjab Agricultural Pesticides Rules, 2018 ('the 2018 Rules') provides that the pesticide laboratory has to be duly certified by the International Organization for Standardization (ISO). However, under the Pakistan National Accreditation Council Act, 2017 ('the 2017 Act') the conformity assessment bodies or laboratories in the country, including pesticide laboratories, have to be accredited and certified by the Pakistan National Accreditation Council ("PNAC") to follow and implement national and international standards. Thus, Rule 22 of the 2018 Rules requiring the certification to be done by ISO is offensive to the provisions of the 2017 Act. In Pakistan laboratories can only be accredited or certified by PNAC.

Muhammad Asghar and 3 others v. Station House Officer and 2 others PLD 2020 Lah. 87 distinguished.

International Organization for Standardization (ISO) only sets standards, which are then adopted by the national accreditation body. Under the 2017 Act, PNAC establishes internationally recognized accreditation system inline with national and international standards. ISO does not perform certification of laboratories. ISO only develops international standards and is not involved in their certification and does not issue certificates. Thus a company or organization cannot be certified by ISO.

Rule 22 of the 2018 Rules to the extent where it requires that the pesticide laboratory shall be duly certified by ISO is not reconcilable with section 13 of the Agricultural Pesticides Ordinance, 1971 ('the Ordinance'), and section 4 of the 2017 Act, and in such a situation rule being a subordinate provision must give way.

Maxwell, Interpretation of Statutes, 11 ed, p 50 ref.

Applying the principle of reading down, the Supreme Court saved the legality of Rule 22 of the 2018 Rules by directing that that the phrase "the pesticide laboratory shall be duly certified by International Organizations for Standardization (ISO)" is to be read down to mean that the pesticide laboratory shall follow the national and international standards as accredited by PNAC under 2017 Act. Supreme Court further directed the Provincial Government to review Rule 22 of the 2018 Rules, and bring the same in conformity with the provisions of the Ordinance and 2017 Act. Petitions for leave to appeal were partly allowed.

(b) Interpretation of statutes---

---Rules made under a statute---Reconciling Rules with the parent statute---Scope---No rule can be framed so as to be in conflict with or in derogation from the statute under which it is framed or in conflict with any other statute, which is not inconsistent with the parent statute under which the rule is framed---However, before

declaring so, the court should endeavour to reconcile the rule, that is to say, the rule may be so read, if the phraseology permits it, as to make it consistent with the provisions of the statute.

NS Bindra, Interpretation of Statutes, 10th edition, p.560 ref.

(c) Interpretation of statutes---

---Reading down a provision in a statute or a Rule---Concept of reading down stated.

The golden rule behind the rule of reading down is to recognize and respect the wisdom of the legislature and assume that legislature would never have intended to legislate an invalid law. The same principle applies to subordinate legislation as it is not expected that the subordinate legislating authority will frame rules in violation to the parent Act or any other statute. Rule of reading down a statutory provision is now well recognized rule of interpretation. This rule avoids striking down of statute or rule which carries curable constitutional or legal vice and instead by reading them down achieves to harmonize the statute or the rule with the general scheme of the Act and the Rules. It is a rule of harmonious construction under a different name. It is generally used to straighten the crudities or ironing out the creases to make a statute or a rule workable. The rule of reading down is used for a limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statutes.

J. K. Udaipur Udyog Ltd v. State of Gujarat (Full Bench of High Court of Gujarat at Ahmedabad) - MANU/GJ/0499/2001 and Union of India v. Ind-Swift Laboratories Ltd, (2011) 4 SCC 635 ref.

Rana Shamshad Khan, Additional A.G., Asif Mehmood Cheema, Additional A.G., Zafar Zulqarnain Sahi, Additional A.G. along with Javed Iqbal, Law Officer, Faqeer Ahmed D.G. Pest Warning and Dr. M. Akram Director Soil Fertility Lahore for Petitioner.

M. Afzal Awan, Advocate Supreme Court assisted by Malik Ali Muhammad Dhol, Advocate for Respondents.
Date of hearing: 6th January, 2023.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---This consolidated judgment shall decide Civil Petitions Nos. 1336-L of 2021 to 1340-L of 2021 as these petitions involve common questions of law and facts.

2. Brief facts of the case are that the respondents are

pesticide¹ dealers duly registered under "The Agricultural Pesticides Ordinance, 1971" ("Ordinance"). As per sections 16 and 17 of the Ordinance, sample of the pesticide distributed by the respondents can be collected by the Agriculture Department and sent for examination to the pesticide laboratory for analysis. Exercising their power under the aforesaid provisions samples of pesticides namely Acephate and Sulphate of Potassium ("SOP") were collected by the Agricultural Department from the respondents and sent for analysis to the pesticide laboratory. The Report of the pesticide laboratory dated 30.09.2020 declared the aforesaid products to be "sub standard and fake". The said Report was challenged by the respondents before the High Court through writ petitions on different grounds. The jurisdictional ground taken by the respondents was that the pesticide laboratory in question was not duly certified by the International Organization for Standardization ("ISO") as per Rule 22 of the Punjab Agricultural Pesticides Rules, 2018 ("Rules"), as a consequence the Report of the said pesticide laboratory can neither be relied upon by the Agriculture Department nor criminal proceedings can be initiated against the respondents, under Chapter IV of the Ordinance. In support of their claim respondents relied upon Muhammad Asghar². The High Court allowed the said writ petitions relying on Muhammad Asghar to hold that the pesticide laboratories had to be certified by the ISO and in the absence thereof their Reports cannot be relied upon or form basis of any criminal proceedings against the respondents, hence the instant civil petitions.

3. We have heard the learned counsel for the parties and examined the record. It is noticed that the High Court has only decided the jurisdictional question regarding the competence of the pesticide laboratory to carry out the analysis and test of pesticides under Rule 22 of the Rules and has not adverted to the other grounds raised in the writ petitions. Therefore, the only question of law before us is whether the pesticide laboratory established under section 13 of the Ordinance is required to be certified by the ISO as prescribed in Rule 22 of the Rules.

4. We have examined the provisions of the Ordinance³, the Rules and the Pakistan National Accreditation Council Act, 2017 ("Act, 2017"). The Ordinance regulates the import, manufacture, sale, distribution and use

of pesticides, which are duly registered under the Ordinance. Section 13 of the Ordinance provides for the establishment of pesticide laboratories. Section 13 is reproduced hereunder for convenience:-

"S. 13. Pesticide Laboratory.---(1) As soon as may be after the commencement of this Ordinance, the Government shall set up a Pesticide Laboratory or, in consultation with the provincial government, declare a provincial laboratory as pesticide laboratory which may be suitably equipped to carry out the functions entrusted to it by or under this Ordinance.

(2) The functions of the Pesticide Laboratory and the mode of submission of samples for analysis or test to the Laboratory shall be such as may be prescribed.

(3) The secrecy of the formula of pesticides, samples of which are submitted to the Pesticide Laboratory for analysis or test, shall be duly safeguarded in the manner prescribed."

The above shows that the pesticide laboratory is to be set up by the Provincial Government, which is to carry out its functions entrusted to it by or under the Ordinance. Section 13(2) provides that the functions of the pesticide laboratory and the mode of submissions of samples for analysis or test to the Laboratory shall be such as may be "prescribed". The word "prescribed" under section 3(o) means as prescribed under the Rules. Under section 13(2) of the Ordinance Rules can only provide the procedure for the functions of the pesticide laboratory and the mode of submissions of samples for analysis or tests, while the laboratory is set up as a pesticide laboratory under section 13 by the Provincial Government. Rules enjoy no power to set up or establish the pesticide laboratory, which is the sole prerogative of the Provincial Governments under section 13(1) of the Ordinance. The power to make Rules under section 29 of the Ordinance also does not authorise the Provincial Government to make Rules regarding the setting up of the pesticide laboratory. Rule 22 provides as follows:-

"Rule 22. Pesticide laboratory.---(1) The pesticide laboratory shall be duly certified by international organization for standardization (ISO) and perform the following functions: (a) analyze and test samples of pesticides; and (b) carry out such duties as may be, entrusted by the Secretary Agriculture;" (emphasis supplied)

The above Rule shows that the pesticide laboratory has to be duly certified by the International Organization for Standardization (ISO). Certification of the pesticide laboratory is a matter relating to its setting up and cannot be regulated by the Rules as the prerogative of setting up the pesticide laboratory is that of the Provincial Government under section 13. Further, under the Act, 2017 the Pakistan National Accreditation Council ("PNAC") has been established for providing accreditation/certification of Conformity Assessment Body (Laboratories) across the country in order to enable the laboratories to assure the quality of products, services and management system in accordance with national and international standards for sustainable socio economic development. Two main functions of the PNCA under section 4(a) and (d) of Act, 2017 are to establish an internationally recognized accreditation system and accredit the conformity assessment bodies. Therefore, under the Act, 2017 the conformity assessment bodies or laboratories in the country have to be accredited and certified by the PNAC. Rule 22 requiring the certification to be done by ISO is offensive to the provisions of Act, 2017. In Pakistan laboratories can only be accredited or certified by PNAC. Reliance on Muhammed Asghar is also misplaced as the said opinion revolves around the mandatory and directory nature of Rule 22 and does not discuss the vires of the Rule when compared with the provisions of the Ordinance and the Act, 2017. The said opinion is also silent regarding the fact that ISO is not a certifying or a conformity assessment organization but an organization that only develops standards as discussed hereunder.

5. Another important dimension of the case is that the Director General, PNAC who appeared before us on 12.08.2021 stated that the ISO is based in Switzerland and is not a certification organization, therefore, it does not certify or accredit any laboratory anywhere in the world. ISO only sets standards, which are then adopted by the national accreditation body. Under the Act, 2017, PNAC establishes internationally recognized accreditation system inline with national and international standards.

6. We have also gone through the website⁴ of ISO and have found that ISO does not perform certification of laboratories. ISO only develops international standards and is not involved in their certification and does not issue certificates. Thus according to the website of ISO, a company or organization cannot be certified by ISO.⁵

7. Rule 22 of the Rules to the extent where it requires that the pesticide laboratory shall be duly certified by ISO is not reconcilable with section 13 of the Ordinance and section 4 of the Act, 2017 in such a situation rule being

a subordinate provision must give way⁶. No rule can be framed so as to be in conflict with or in derogation from the statute under which it is framed or in conflict with any other statute, which is not inconsistent with the parent statute under which the rule is framed. However, before declaring so, the court should endeavour to reconcile the rule, that is to say, the rule may be so read, if the phraseology permits it, as to make it consistent with the provisions of the statute⁷. Therefore, in order to ensure that the harmonious functionality of the Ordinance, Act, 2017 and the Rules is maintained, we propose to read down Rule 22. The golden rule behind the rule of reading down is to recognize and respect the wisdom of the legislature and assume that legislature would never have intended to legislate an invalid law. The same principle applies to subordinate legislation as it is not expected that the subordinate legislating authority will frame rules in violation to the parent Act or any other statute. Rule of reading down a statutory provision is now well recognized rule of interpretation. This rule avoids striking down of statute or rule which carries curable constitutional or legal vice and instead by reading them down achieves to harmonize the statute or the rule with the general scheme of the Act and the Rules.⁸ It is a rule of harmonious construction under a different name. It is generally used to straighten the crudities or ironing out the creases to make a statute or a rule workable. The rule of reading down is used for a limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statutes⁹. In this case the object of Rule 22(1) is to ensure that the pesticide laboratory follows international standards set by ISO, which is admittedly being achieved through PNAC, the accrediting organization in the country under the Act, 2017. Therefore, applying the principle of reading down, we save the legality of Rule 22 to the extent that the phrase "the pesticide laboratory shall be duly certified by International Organizations for Standardization (ISO)" is to be read down to mean that the pesticide laboratory shall follow the national and international standards as accredited by PNAC under Act, 2017. Additionally, we direct the Provincial Government to review the said Rule and bring the same in conformity with the provisions of the Ordinance and Act, 2017. Admittedly, the pesticide laboratories in these cases are duly certified by PNAC and function under an internationally recognized accreditation system, therefore the analysis and test reports issued by the said laboratories can be relied upon by the Agriculture Department to take further proceedings under the law. The other factual and legal grounds challenging the veracity and validity of the Reports other than the jurisdictional ground have not been addressed by the High Court. Therefore, we hold that the pesticide laboratories in these cases are duly certified under the law as a result the impugned judgment of the High Court is set aside and the cases are remanded to the High Court. The writ petitions of the respondents shall be deemed to be pending before the High Court which shall decide the same after addressing all the other grounds of law and facts raised by the petitioners before it.

8. In this background the impugned orders are set aside and the titled petitions are partly allowed in the above terms. It is clarified and reiterated that pesticide laboratories are to be accredited and certified by PNAC under Act, 2017 to follow and implement national and international standards.

MWA/P-3/SC Order accordingly.