



Environmental Social
Justice
&
Governance Initiatives

*Organization in Special Consultative Status with
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Environment Support Group® – Trust

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Shri. Krishna Palemar
Hon'ble Minister for Environment and Ecology
Harbour and Inland Water Transport, Fisheries
Science and Technology
Government of Karnataka
and
Chairman
Karnataka State Biodiversity Board
Vikasa Soudha
Bangalore 560001

06 February 2012

Reg.: Violation of Biological Diversity Act, 2002 in matters relating to access and utilisation of local brinjal varieties for development of Bt. Brinjal by M/s Monsanto/M/s Mahyco and ors., and related issues.

Ref.: Our complaint on the aforesaid subject before the Karnataka State Biodiversity Board, dated 15 February 2010

Dear Shri. Palemar,

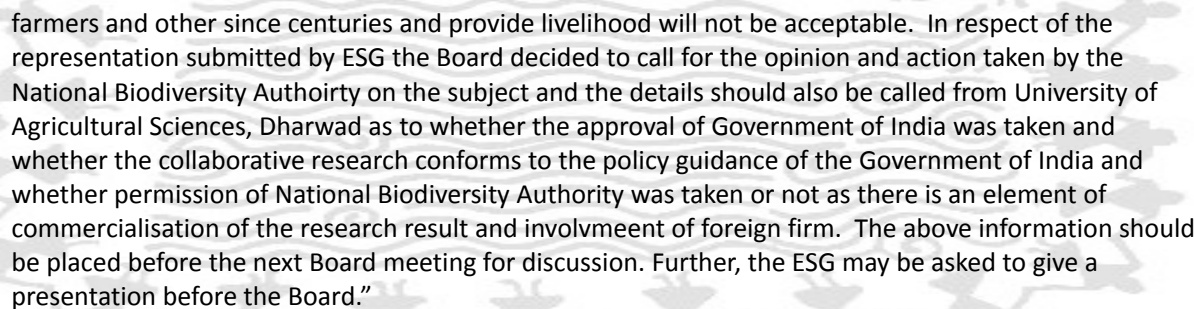
We are shocked to learn that in the 19th meeting of the Karnataka State Biodiversity Board held on 20th January 2012 and presided over by you, a resolution has been passed which in effect amounts to totally abandoning the Board's and Karnataka Government's obligations to prosecute those violating the provisions of the Biological Diversity Act, 2002. Such a decision has been taken in a discussion relating to our complaint that US MNC M/s Monsanto and its Indian subsidiary M/s Mahyco along with their collaborators (University of Agricultural Sciences, Dharwar; Tamilnadu Agricultural University, Coimbatore; Indian Institute of Vegetable Research, Lucknow; Sathguru Foundation, Hyderabad; United States Agency for International Development and Cornell University, New York) have wilfully violated the provisions of the Act by accessing 12 varieties of brinjal endemic to India and genetically modifying it resulting in a patented product – B.t. Brinjal. Such actions constitute biopiracy per the Act. For your ready reference, the relevant extract of the minutes read as follows:

“The subject was deliberated and it was clarified that the subject comes under the purview of the National Biodiversity Authority. Therefore, it was resolved that **it is for the National Biodiversity Authority to take necessary action at their end against institutions/companies regarding alleged violations of provisions under Biodiversity Act 2002.” (Emphasis supplied)**

This decision is patently illegal as it is fundamentally opposed to the very object of the law and is contrary to the very purpose of establishing the Board. In addition, it is absolutely contrary to earlier decisions of the Board wherein a clear intent was demonstrated to spare no effort against those engaging in acts of biopiracy, and other violations of the Act.

For instance, the 13th Board meeting held on 26 February 2010 decided on the aforesaid matter as follows:

“The issue of Bt. Brinjal and the representation of Environmental Social Justice Group (ESG) was considered by the Board. The Board was of the opinion that in respect of Bt. Brinjal the Board holds the same opinion as that of the Government of Karnataka. Further, the Board desires that any Bt. Crop which endangers the local and traditional varieties available in Karnataka which have been raised by the



farmers and other since centuries and provide livelihood will not be acceptable. In respect of the representation submitted by ESG the Board decided to call for the opinion and action taken by the National Biodiversity Authority on the subject and the details should also be called from University of Agricultural Sciences, Dharwad as to whether the approval of Government of India was taken and whether the collaborative research conforms to the policy guidance of the Government of India and whether permission of National Biodiversity Authority was taken or not as there is an element of commercialisation of the research result and involvement of foreign firm. The above information should be placed before the next Board meeting for discussion. Further, the ESG may be asked to give a presentation before the Board.”

In the months that followed, the Board extensively investigated the issue as is evident in the minutes of the Board meetings. Most importantly, the intent of the Board remained firm to tackle biopiracy.

As you are aware, the Authority passed a resolution on this subject in its 20th meeting held on 20 June 2011, as follows:

“20.5: Consider the action to be taken by NBA and SBBs on violators of the provisions of the BD Act 2002. A background note besides legal opinion on Bt brinjal on the alleged violation by the M/s. Mahyco/M/s Monsanto, and their collaborators for accessing and using the local brinjal varieties for development of Bt brinjal without prior approval of the competent authorities was discussed and **it was decided that the NBA may proceed legally against M/s. Mahyco/ M/s Monsanto, and all others concerned to take the issue to its logical conclusion.** Further, it was decided to proceed legally against the violators in the case of export of embryos of Gir breed of cattle and Ongole breed bull and its semen to Brazil.”
(Emphasis supplied)

In the 18th Board meeting held subsequently on 14 September 2011, it is recorded as follows:

“It was decided to wait for further intimation/guidance from National Biodiversity Authority regarding initiating legal action against violators of provisions of Biological Diversity Act 2002. It was also decided in the meeting that in future for research and development and bio safety trials of an Bt. Crop to be conducted in Karnataka state, prior permission from the KBB is required and this may be communicated to Central Government.”

Soon after, Smt. Jayanti Natarajan, Indian Minister for State for Environment and Forests, made the following submission in the Lok Sabha on 28 September 2011 in response to a question on the status of investigation on our complaint, as follows:

“(a) **Based on preliminary information placed before it, the National Biodiversity Authority has recommended in principle to initiate legal action against alleged violators for violation of various provisions of the Biological Diversity Act, 2002.**

(b) **The National Biodiversity Authority received a complaint from Environment Support Group (ESG), Bangalore alleging biopiracy by M/s Monsanto/ Mahyco and its collaborators in the development of Bt. Brinjal. Based on this, the Authority with the help of Karnataka State Biodiversity Board began investigating this allegation.** Information and inputs from those institutions and agencies involved in the development of the said Bt. Brinjal material were procured and legal assessment of this information was undertaken considering the elements and extent of violation of the provisions of the Biological Diversity Act. Further, more information was sought from the agencies involved in the development of this material and **action will be taken appropriately.**” (Emphasis supplied)

Flowing from the above, it seems reasonable to conclude that for taking appropriate action on the complaint, the Board in its collective wisdom thought it fit to wait for the opinion sought from the National Biodiversity Authority. Considering that such opinion is yet to be provided by the Authority, there is no reason whatsoever for the Board to take any decision contrary to law and the opinion of the Authority and the statement made by the Indian Environment Minister to the Parliament.

Equally important is the fact that throughout the two years when the Board has deliberated this issue, you have

been the Chairman and consistently demonstrated an intent to prosecute violators of the Biodiversity Act. We find it particularly disturbing that you have now gone against this long held position, which was legally tenable, and instead become party to passing a resolution in the 19th Board meeting, which claims that the National Biodiversity Authority should take appropriate action against violators of the Biological Diversity Act, 2002. This amounts to abdicating the responsibility of the State Government and the Board, as defined in the Act:

- Section 23 of the Biodiversity Act which empowers State Biodiversity Boards to advise State Government on appropriate implementation of the Act and also regulate access to biological resources.
- Section 7 of the Act that empowers State Boards to monitor access to biological resources.

It is also illegal as it violates the specific provision of the Act that makes it mandatory of State officials to initiate prosecution against violators in this case of biopiracy. Such powers are contained in Notifications issued by the Ministry of Environment and Forests empowering officials of the rank of Range Forest Officer (working at the State level) and above, to initiate prosecution against violators as per Section 61 of the Act (These notifications are accessible on the Authority's website at: <http://nbaindia.in/content/18/21/notifications.html>). The aforesaid Resolution disbars officials to discharge their mandatory police powers of prosecuting violators.

This shift in the Board's intent seems to have taken place in a meeting that saw the first appearance of Mr. Kaushik Mukherjee, IAS, Addl. Chief Secretary and Head of Dept. Of Forests, Ecology and Environment of the Government of Karnataka and Mr. Avani Kumar Varma, IFS, Principal Chief Conservator of Forests, Karnataka. While Mr. Mukherjee by his position acts as a custodian of Karnataka's biodiversity with absolute responsibility for appropriate implementation of the Biodiversity Act, Mr. Varma has all the powers of prosecution as the entire Forest force, including Range Forest Officers who have the power to prosecute violators of Biodiversity Act, act exclusively under his orders. It appears both senior officials preferred to not advise the Board on taking the correct legal approach, and instead have allowed the State of Karnataka to hang its head in shame by allowing this highly illegal resolution of the Board.

In summary, all this amounts to an astonishing act of abandoning the Board's obligatory functions of taking appropriate legal action against M/s Monsanto and M/s Mahyco and their collaborators for committing criminal acts of biopiracy. *It is absolutely essential now that this wrong and illegal decision be reversed with due dispatch.*

India will host the 11th Conference of Parties of the Convention on Biological Diversity in October at Hyderabad this year. For a Board which only a year ago was declared the best in the country, the resolution is a slap on Karnataka's rich tradition of conserving biodiversity.

We therefore demand that an emergency meeting of the Board must be called to revisit this resolution that abandons the Board's regulatory powers under the Act, and set right the wrong committed. As complainants we claim our right to participate in this meeting and make appropriate submissions.

Yours truly,



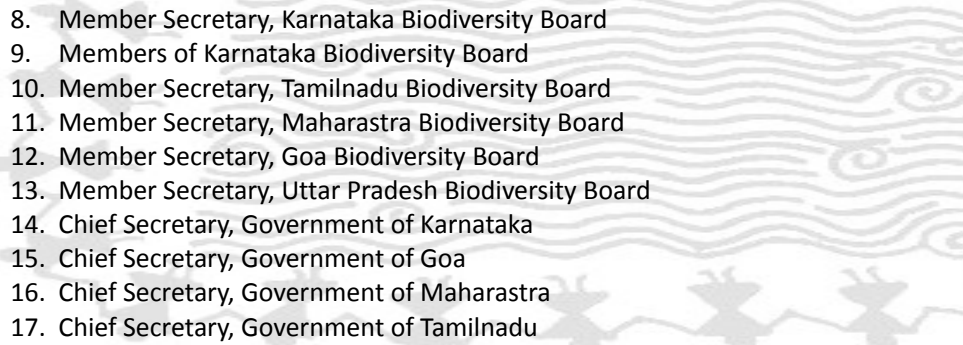
Leo F. Saldanha
Coordinator/Trustee



Bhargavi S. Rao
Coordinator (Education)/Trustee
Environment Support Group

Cc.:

1. Dr. Manmohan Singh, Prime Minister of India
2. Smt. Jayanti Natarajan, Minister of State for Environment and Forests (I/c), Government of India
3. Shri. Sadanand Gowda, Chief Minister, Government of Karnataka
4. Dr. Pisupathi Balakrishna, Chairman, National Biodiversity Board
5. Members of the Indian Parliament
6. Secretary, Union Ministry of Environment and Forests (MoEF)
7. Mr. Achalendra Reddy, Member Secretary, National Biodiversity Board

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8. Member Secretary, Karnataka Biodiversity Board
 9. Members of Karnataka Biodiversity Board
 10. Member Secretary, Tamilnadu Biodiversity Board
 11. Member Secretary, Maharastra Biodiversity Board
 12. Member Secretary, Goa Biodiversity Board
 13. Member Secretary, Uttar Pradesh Biodiversity Board
 14. Chief Secretary, Government of Karnataka
 15. Chief Secretary, Government of Goa
 16. Chief Secretary, Government of Maharastra
 17. Chief Secretary, Government of Tamilnadu
 18. Chief Secretary, Government of Uttar Pradesh
 19. Director General of Forests and Special Secretary, MoEF
 20. Member Secretary, Genetic Engineering Approval Committee, MoEF
 21. Principal Secretary, Karnataka Department of Forests, Ecology and Environment
 22. Principal Secretary, Karnataka Department of Agriculture
 23. Principal Secretary, Tamilnadu Department of Agriculture
 24. Principal Secretary, Maharashtra Department of Agriculture
 25. Principal Secretary, Goa Department of Agriculture
 26. Principal Secretary, Uttar Pradesh Department of Agriculture
 27. Media and the wide public.