

Release: 21 November 2012: Bangalore

Karnataka High Court Issues Notice in PIL Highlighting Egregious Biopiracy and Governmental Apathy

The Principal Bench of the High Court of Karnataka (comprising Chief Justice Mr. Vikramjit Sen and Justice Mrs. B. V. Nagarathna) today ordered issue of notice in the Public Interest Litigation (Writ Petition No. 41532/2012) filed by Environment Support Group, Bangalore (ESG) and listed the matter for further consideration for the fourth week of January 2013.

ESG's petition highlights the shocking state of biodiversity conservation in India, and urges the Court to direct attention to the widespread practice of *biopiracy* by national and international corporate bodies. Further, the petition highlights a number of specific defects, lacunae and failures in the current legal and institutional regimes that are directly resulting in the rampant irreversible loss of India's biological diversity and associated traditional knowledge, and are thereby threatening not only sovereign control over biological resources but also the livelihoods of indigenous and natural resources dependent peoples.

Specifically, the Petitioners have drawn the attention of the Court to the continuing failure on the part of regulatory authorities to initiate action against M/s Mahyco, M/s Monsanto, and various public agricultural universities involved in promoting *B.t. Brinjal* despite categorical evidence indicating that egregious criminal biopiracy of local varieties of brinjal (egg plant) was involved. This failure of the regulatory authorities has also been strongly criticised by the Parliamentary Committee on Agriculture in its August 2012 report on "*Cultivation of Genetically Modified Food Crops – Prospects and Effects*" which has called for "*...a thorough inquiry in the matter of continued paralysis in decision making on a case of this dimension.*"

The Petitioners have also highlighted that the Ministry of Environment and Forest's 26 October 2009 Notification listing 190 plants as Normally Traded Commodities (NTC) includes, shockingly, at least 18 critically endangered plants. The Petition contends that while hundreds of community and regional initiatives are desperately trying to protect such endangered plants, the Ministry's Notification callously promotes their unfettered international trade thus driving them potentially into extinction. The Petition also argues that Section 40 of the Biodiversity Act, 2002, which arbitrarily allows such unfettered trade in India's biological wealth through an uncanalised power to label something as a Normally Traded Commodity, paves the way for rampant biopiracy. The writ petition therefore urges that this section be struck down as being *ultra vires* of the Biological Diversity Act, 2002 and the Constitution of India.

Finally, the Petition draws the attention of the Court to the reports of the Comptroller and Auditor General of India and the Indian Parliament's Committees on Agriculture and Public Accounts, all of which have independently come to the conclusion that there has been colossal failure on the part of the Ministry of Environment and Forests and the National Biodiversity Authority in protecting the country's biodiversity.

On such and other grounds, the petition prays that environment, social and bio-diversity impact assessments based on meaningful compliance with the Principle of Prior and Informed Consent must be

made mandatory for all decisions impacting biodiversity, associated traditional knowledge and livelihoods. The prayer seeks the quashing of the Ministry's 26 October 2009 Notification on NTC and urges the Court to direct the Ministry and the National Biodiversity Authority to institute appropriate structures, procedures and norms to protect India's biodiversity in strict conformance with relevant constitutional norms, the Biological Diversity Act, 2002, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Environment (Protection) Act, 1986, amongst others.

It may be recalled that the High Court had taken note of the PIL on 16 October 2012 when Chief Justice Mr. Vikramjit Sen pointedly observed that dharnas must be organised against the United States of America for its continued intransigence in complying with global biodiversity norms, highlighting that such action might perhaps be necessary in tackling challenges to global biodiversity conservation. This remark was made even as the 11th Conference of Parties on the Convention on Biological Diversity was held at Hyderabad, a gala UN event that was colossal failure in safeguarding biodiversity and traditional knowledge and livelihoods associated with it.

The extraordinary seriousness with which the Court had taken note of the Petition's concerns should have propelled regulatory agencies in initiating prosecution of those guilty of biopiracy. Quite in contrast, when Petition is under the active consideration of the Court, it is reported that the Karnataka Government has scandalously transferred the two key officers who were empowered by the Karnataka Biodiversity Board to file criminal complaints against Monsanto/Mahyco and others involved in such serious crimes. This is clearly demonstrative of the high levels of collusion that exists within the Government to scuttle the possibility of the prosecution in India's first biopiracy case proceeding per law.

ESG holds that this is clearly to benefit powerful agri-business corporations such as Monsanto, and will take up this matter at the very highest level to have the officers restored to their current positions forthwith.

Leo F. Saldanha
Coordinator
ESG
leo@esgindia.org

Sunil Dutt Yadav
Counsel for ESG
sunil_dy@yahoo.com

Bhargavi S. Rao
Coordinator (Education)
ESG
bhargavi@esgindia.org

Abhayraj Naik
Volunteer Researcher
ESG
abhayraj@esgindia.org

Environmental, Social Justice and Governance Initiatives,
Environment Support Group – Trust,
1572, 36th Cross, Ring Road
Banashankari II Stage,
Bangalore 560070. INDIA.
Tel: 91-80-26713559~61
Voice/Fax: 91-80-26713316
Web: www.esgindia.org
Email: esg@esgindia.org