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Public Interest Litigation in Karnataka High Court challenging callous disregard for biodiversity protection

Environment Support Group has filed a Public Interest Litigation (WP No. 41532/2012) in the Karnataka High Court challenging widespread violations of the Biological Diversity Act, 2002 and various interconnected laws, and thereby the Convention on Biological Diversity, 1992.

Taking note of the PIL, the Principal Bench of the High Court constituted by Chief Justice Mr. Vikramjit Sen and Justice Mrs. B. V. Nagarathna listed the petition for further consideration on 20th November, 2012. ESG's PIL holistically addresses 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 legal and institutional regimes that are accommodating rampant loss of India's biological diversity and associated traditional knowledge, thus threatening livelihoods of indigenous and natural resources dependent peoples.

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, which have independently come to the conclusion that there has been colossal failure on the part of the Ministry of Environment and Forests and National Biodiversity Authority in protecting the country's biodiversity.

Specifically, the Petitioners highlight that the Ministry's 26 October 2009 Notification listing 190 plants as Normally Traded Commodities (NTC) includes at least 18 critically endangered plants. While hundreds of community and regional initiatives are desperately trying to protect such plants, the Ministry's Notification callously promotes their unfettered international trade thus driving them potentially into extinction, state the Petitioners. The Petitioners highlight that the main beneficiaries of such trade are Indian and foreign corporations, and very little benefit is accrued to the national exchequer or by communities conserving biodiversity. The Petitioners contend that Sec. 40 of the Biodiversity Act, 2002, which allows such unfettered trade in India's biological wealth, also paves way for rampant biopiracy and calls for quashing this section as being *ultra vires* of the Biological Diversity Act, 2002 and the Constitution of India.

Additionally, 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* by bio-pirating local varieties of brinjal (egg plant). The Petition draws the Court's attention to the fact that over a year after the Indian Environment Minister Mrs. Jayanti Natarajan assured Parliament that violators would be criminally prosecuted, no legal action has followed till date. This failure by regulatory authorities has 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".

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 Notification on NTC as being illegal and urges the Court to direct the Ministry and the Authority to institute appropriate structures, procedures and norms to protect India's biodiversity in strict conformance with the Biological Diversity Act, 2002, Panchayat Raj Act, 1992, Nagarpalika Act, 1992 and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, Environment Protection Act, 1986, amongst others.

Leo F. Saldanha
2nd Petitioner and
Coordinator, ESG

Sunil Dutt Yadav
Advocate for ESG
1st Petitioner

Bhargavi S. Rao
Coordinator (Education)
ESG

Abhayraj Naik
Volunteer Researcher
ESG

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