IN THE SUPREME COURT OF INDIA
CIVIL WRIT ORIGINAL JURISDICTION

IA No _____ of 2019
IN
WRIT PETITION (CIVIL) NO. 1079 OF 2017

In the matter of:

Kavitha Kuruganti & Ors. ...Petitioners

Vs.

Union of India & Ors. ...Respondents

APPLICATION TO AMEND THE PETITION AND PRAYERS IN MAIN WRIT PETITION ON BEHALF OF PETITIONERS

To
The Chief Justice of India and
His Companion Justices
Supreme Court of India

Humble Application of the
Petitioners abovementioned

Most respectfully showeth:

1. That the Writ Petition was filed seeking ban on pesticides in the interest of public health. I am the Petitioner No. 1 in the aforementioned writ petition and being familiar with the facts and circumstances of the case, I am competent to swear and file this Affidavit. I have also been authorised to file this affidavit on behalf of all other Petitioners. This amendment application is necessary in the interest of Justice, in view of the contentions of the Respondents in their counter affidavits.
2. At the outset, it is submitted that the submissions made in the Writ Petition are not reiterated and repeated for the sake of brevity.

3. **Transparency: All underlying material for grant of Registration of Insecticides to be made Public:** Right to Health is a fundamental right, covered under A.21 as held in (1987) 2 SCC 165, Vincent Panikurlangara v. Union of India Para 16, Unikrishnan, JP V. State of AP (1993) 1 SCC 645, X v. Hospital Z (1998) 8 SCC 296, State of Punjab V. Mahinder Singh Chawla (1997) 2 SCC 83, ParamanandKatara v. UOI (1989) 4 SCC 286, PaschimBangalKhetMazdoor Society V. State of WB (1996) 4 SCC 37.
4. In case of Insecticides, Precautionary principle also applies and Insecticides Act, rightly, positively regulates substances, wherein unless specifically permitted, no insecticide can be used.
5. This Hon'ble Court as Sentinel at Qui Vive is Constitutionally obligated to uphold Fundamental rights.
6. Refusal of Union of India to disclose information about pesticides is unsustainable. Union of India is bound not only to make Malhotra Committee report information public but also all the underlying material considered before registration of insecticides and to continue sustaining of registration. Transparency is Sine Qua Non for good governance and for that matter for basic governance. Doctrine of Sunshine applies in this case.
7. UoI has no obligation towards information provided to Regulator as held by this Hon'ble Court in ***RBI v. Jayantilal N. Mistry*, (2016) 3 SCC 525** which applies mutatis mutandis.

*"**62** …where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case,*

the financial institutions have an obligation to provide all the information to RBI and such information shared under an obligation/duty cannot be considered to come under the purview of being shared in fiduciary relationship. One of the main characteristics of a fiduciary relationship is "trust and confidence": something that RBI and the banks lack between them."

8. Union of India has no obligation to maintain any confidentiality of insecticide related information but has duty to disclose insecticide related information in view of fundamental rights of citizens. Even if there are any private interests, including conflict of interest between stake holders and even in case of commercial impact, overriding public interest in disclosure outweighs the harm to the protected interests. This Principle has been upheld even in RTI Act, where access to information is provided irrespective of Locus Standi or Public Health concerns. Public interests hold paramountcy against all private interests, especially, in view of Precautionary Principle in Public health.

9. The Courts of this country have declared in a plethora of cases that the most important value for the functioning of a healthy and well informed democracy is transparency. In **State of UP vs Raj Narain, (1975) 4 SCC 428, Pg 453** a constitutional bench of the Hon'ble Supreme Court held that:

> ***74.*** *In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public…*

10. In **S.P. Gupta Vs President of India and Ors, (1981) Supp SCC 87 Pg 273**, a seven Judge Bench of the Honble Supreme Court of India observed

> ***66.*** *There is also in every democracy a certain amount of public suspicion and distrust of Government, varying of course from time to time according to its performance, which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the Government must be actuated by public interest but even so we find cases, though not many, where Governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes Governmental action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of Government and the processes of Government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open Government with means of information available to the public, there would be greater exposure of the functioning of Government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open Government is clean Government and a powerful safeguard against political and administrative aberration and inefficiency.*

11. In **Union of India V/s Association for Democratic Reforms, (2002) 5 SCC 294**, Pr 46, Pg 321 Hon'ble Supreme Court of India, held

> *"The right to get information in a democracy is recognized all throughout and is a natural right flowing from the concept of democracy."*

Further in **PUCL case (2003) 4 SCC 399 Pg 438**

> "***42...****It should be properly understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedoms have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since the last more than 50 years, this Court has interpreted Articles 14, 19 and 21 and given meaning and colour so that the nation can have a truly republic democratic society…"*

12. RTI Act 2005 as is noted in its very preamble, does not create any new right but only provides machinery to effectuate the fundamental right to information. The preamble also inter-alia states:

> *"…democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed."*

13. **The Insecticides Act, 1968, S.27(2) conferring Insecticide Prohibitory Power Exclusively to Central Government is Unconstitutional**. **It needs to be quashed, or alternately, *read down/read into* , to include State Government:**

Constitution of India, Schedule VII, List II, Entry 14 reads as

> *"Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases".*

Hence, Agriculture is a state subject for legislation. Assuming without proposing, even if there are any overlaps with other entries, by virtue of Doctrine of Pith and Substance, it cannot be anything but State Subject and Union Government cannot appropriate to itself any power that, too exclusively to itself, constitutionally.

14. Federalism, which is part of Basic Structure of the Constitution, is constitutionally meaningful distribution of powers without encroaching on the field reserved to other by the Constitution. In Recent **K. Lakshminarayanan v. UOI (2018) SCC OnLine SC 2730**, CA 11887 of 2018, decided on December 6, 2018, this Hon'ble Court summarised Jurisprudence on

Federalism. Relevant pages enclosed as **Annexure A20 (Pg_____).**

15. State **(NCT OF DELHI) Vs UOI & Anr (2018) 8 SCC 501** also elaborately discussed Jurisprudence on Federalism.

*"**131.** …To subject the people of a particular State/region to the governance of the Union, that too, with respect to matters which can be best legislated at the State level goes against the very basic tenet of a democracy…"*

Relevant pages enclosed as **Annexure A21 (Pg_____).**

In view of distinct variation of crop pattern and first hand direct information from local staff, insecticides are better regulated regionally rather than paint with same brush.

S.R. Bommai v. Union of India, (1994) 3 SCC 1Pg 216

*"**276.** The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers. More particularly, the courts should not adopt an approach, an interpretation, which has the effect of or tends to have the effect of whittling down the powers reserved to the States…".*

Mere perusal of the Scheme of the Insecticides Act, and the fact that Union does not have wherewithal infrastructure and staff to efficaciously collect information about insecticides and expeditiously act, requires State Governments to have necessary powers.

S.12, S.13, S.14 Licensing officers – Only State Government. Thus granting/revocation of license exclusively with State governments.

S.19, S.20 Insecticide Analysts and Insecticide Inspectors –

Both State & Central governments empowered to appoint.

S.26 Notification of poisoning – To State Governments only.

S.31 Cognizance and trial of offences – State Govt only.

S.31A Special Courts – State Govt only.

16. **Non Application of Mind and dereliction of duty by Registration Committee. Consideration of irrelevant material and non-consideration of relevant material.**

In Counter Affidavit in IA 132760, Pg 6,Pg 20, Union of India averment is extracted below:

"… The Onus lies with the importer / manufacturers to generate data relating to the insecticides for which registration is sought. The data thus submitted to the RC are evaluated for their efficacy and safety and registrations are granted only on the satisfaction of RC. …"

Following Sections of Insecticides Act are extracted:

S.5(1) Registration Committee

(i) requires RC to *register insecticides after* ***scrutinising*** *their formulae and* ***verifying claims*** *by the importer or the manufacturer, as the case may be, as regards their efficacy and safety to human beings and animals.*

S. 9 Registration of Insecticide

(3) On receipt of any such application for the registration of an insecticide, the Committee may, after such enquiry as it deems fit and after satisfying itself that the insecticide to which the application relates conforms to the claims made by the importer or by the manufacturer, as the case may be, as regards the

efficacy of the insecticide and its safety to human beings and animals, …

Provided further that if the Committee is of opinion that the precautions claimed by the applicant as being sufficient to ensure safety to human beings or animals are not ***such as can be easily observed*** *or that notwithstanding the observance of such precautions the use of the insecticide involves serious risk to human beings or animals it may refuse to register the insecticide…*

Union of India, by accepting data from the importers/manufacturers is abdicating its statutory duty. For obvious reasons, importers/manufacturers would be providing only self-serving data and not incriminating against themselves. Inherent conflict of interest is conveniently ignored. It is akin to Evidence collection in an investigation by suspect/accused. Authorities have to generate the data themselves or independently and validate. No Safeguards are neither pleaded nor known to the petitioners.

17. In view of the abovementioned facts, it is respectfully submitted that following additional prayers are required to be pleaded.

Hon'ble Court may be pleased to

f. Direct Official Respondents to make all underlying material for grant of Registration of Insecticides public.

g. Quash S.27(2) of Insecticides Act or alternately, *read down/read into*, to include State Government as Insecticide prohibiting authority.

h. Direct Official Respondents to re-evaluate suitability of all permitted insecticides by using its own data or independently generated data.

i. Direct Official Respondents to consider availability of equally efficacious organic pesticides and organic insecticides in view of unknown, unforeseeable and unquantifiable impact of chemical insecticides in addition to already pleaded harmful effects before registering inorganic insecticides.

PRAYER

a. That the petitioner be permitted to amend the petition by adding contents of hereinabove mentioned Para 3 to Para 16 and add additional prayers in Para 17.

b. For any other order and/ or direction that this Hon'ble Court may deem fit.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Drawn By: T. Sudhaker

Filed By:

Dated: 2019 **PRASHANT BHUSHAN**

Counsel for the Petitioners

New Delhi

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AFFIDAVIT

I, Kavitha Kuruganti, aged 48 years, D/o Ramesh Kuruganti & Ganga Bhavani, R/o 33/1, Flat No. 302, Santhome Apartments, 1st A Cross, Indiranagar 1st Stage, Bangalore – 560038, India, Presently at New Delhi, do hereby state on solemn affirmation as under:

1. That I am the Petitioner no. 1 in the above named Petition and I am well conversant with the facts and circumstances of this case and hence competent to swear this affidavit.
2. That I have read and understood the contents of the accompanying application and I state that the averments made therein are true and correct to the best of my knowledge and belief.
3. That the annexures to the application are true and correct copies of the respective originals.
4. That the Petitioner has not filed any other or similar petition/ application before this Hon'ble Court or before any other court/ tribunal.

DEPONENT

VERIFICATION:

Verified at New Delhi on this day of , 2019 that the contents of the above affidavit are true and correct to my knowledge, that no part of it is false and that nothing material has been concealed therefrom.

DEPONENT

Annexure A.20 K. Lakshminarayanan v. UOI (2018) SCC OnLine SC 2730, (Pg 1, 13-21; Pr34-61)

Annexure A.21 (NCT OF DELHI) Vs UOI &Anr (2018) 8 SCC 501 (Pg 501,583-598)