IN THE SUPREME COURT OF INDIA

CIVIL WRIT ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 1079 OF 2017

In the matter of:

Kavitha Kuruganti & Ors. …Petitioners

Vs.

Union of India & Ors. …Respondents

REJOINDER AFFIDAVIT ON BEHALF OF PETITIONER

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

1. At the outset, it may be submitted that unless any averment in the counter affidavits is specifically admitted the same may be treated as denied. It is further submitted that the submissions made in the writ petition are reiterated without repeating the same for the sake of brevity.
2. **More pesticides being registered**: As this current case is unfolding, the petitioners realise that Respondent No. 1 is registering more pesticides in the country and as acknowledged in the I.A No. 132760 of 2018 filed by the petitioners. That as on 8th August 2018,

the Ministry of Agriculture and Farmers' Welfare published a Gazette Notification (S.O.3951(E)) called the "Pesticides (Prohibition) Order 2018", wherein a ban came into effect from the date of publication of the Order on the registrations, import, manufacture, formulation, transportation, sales and use of 11 pesticides – Benomyl, Carbaryl, Diazinon, Fenarimol, Fenthion, Linuron, Methoxy Ethyl Mercury Chloride (MEMC), Methyl Parathion, Sodium Cyanide, Thiometon and Tridemorph – in addition to a prohibition and ban on Trifluralin except for use in wheat.

3. That the Writ Petition (Civil) 1079 of 2017, filed by the petitioner in October 2017 provided a list of 99 pesticides being continued in India at a time when one or more country elsewhere had banned or severely restricted them. Subsequent to that an application for direction bearing I.A No. 132760 of 2018 was filed by the petitioners on 13/09/2018 which submitted a revised comparison of registered pesticides in India with bans in other countries and showed that the list is actually of 103 such pesticides, whereas the Anupam Verma Committee (2013-15) had reviewed only 66 pesticides out of which the August 2018 Gazette Notification ordered for the ban of only 11 pesticides. As on 30/06/2017, there were 235 registered pesticides in India, as given in the Respondents' counter-affidavit dated 14th

September 2018. Whereas data originally submitted by the petitioners, culled out from the CIBRC website, again as of 30/06/2017 showed 279 registered pesticides. As of 18th September 2018, the list of pesticides registered under Sec. 9(3) of the Insecticides Act 1968 for use in India is 291. The total number of registered pesticides is however 290, not 291, because Penoxasulam is mentioned twice in the CIBRC/PPQS list at nos. 208 and no. 213 respectively (spelt incorrectly in one instance). A copy of list comprising registered pesticides has been annexed and marked as **ANNEXURE R – 1**.

4. That the fresh list of "ban able" pesticides as prepared by the petitioners has touched 110, way beyond the 66 pesticides that the Anupam Verma Committee was tasked to review in 2013, If the 6 pesticides notified for phasing out are excluded, this list touches 104 such pesticides. A copy of the list of ban able pesticides has been annexed and marked as **ANNEXURE R – 2**.

5. That in the counter-affidavit filed by the Union of India it is argued that India has a robust regulatory regime and that numerous systems are being followed to ensure safety as well as efficacy of chemical pesticides. It also argued that any lack of safety emerges from

indiscriminate and injudicious use of pesticides by farmers. Unfortunately, poisoned agricultural workers and farmers, who are actually victims of this hazardous technology, are being blamed for misuse of pesticides, when the petitioners are making a strong case that when a technology lends itself to such "misuse" and when it is not needed in the first place, the best policy action required is to ban those pesticides. In a predictable attempt, it also brings up issues of food security, even at a time of food surplus being the major problem of Indian farming and farmers. There is allusion to the adoption of Integrated Pest Management principles (IPM) and that Farmer Field Schools are being run to promote IPM amongst farmers, in addition to increased registration and use of bio-pesticides.

6. That the reality of India's chemical pesticide consumption shows that such consumption is increasing in overall volumes and not declining. At a time when post-modern agro ecological science has already proven that pest management in agriculture does not need synthetic pesticides for pest management, the nation as a whole should be alarmed at the increased use of pesticides. The "All India Statistics of Areas under Cultivation and Under Use of Chemical and Bio-Pesticides During 2010-11 to 2015-16" (as on 22/2/2017) reiterate this alarming

picture. A copy of list showing consumption pattern of pesticides during 2010-11 to 2015-16 has been annexed and marked as **ANNEXURE R – 3**. Also a comparative data analysis of All India Statistics of Areas under Cultivation and Under Use of Chemical and Bio-Pesticides During 2010-11 to 2015-16 shows that where 37.11% of India's cultivated land in 2010-11 witnessed use of chemical pesticides, this went up to 54.81% in 2015-16. A copy of the table comprising comparative analysis of data has been annexed and marked as **ANNEXURE R – 4**.

7. That the petitioners would like to draw the attention of this Hon'ble Court to the fact that while the Union of India is claiming that any negative fall-outs of pesticides are only due to misuse or indiscriminate use of pesticides, the reality of both acute poisoning and chronic impacts have been elaborately showcased by the petitioners in the original petition, citing numerous studies and experiences. In I.A No. 132760 of 2018, various newspaper reports have been cited that indicate deaths and hospitalisations in several states of India due to acute pesticide poisonings even in 2018, despite an intense national debate on the matter in 2017 after many lives were lost in Vidarbha and other regions due to poisonings. This clearly shows that usage of pesticides cannot be regulated for a

variety of reasons including the aggressive marketing of pesticides, failure of the extension system, socio-economic conditions of our farmers and so on. The myth of "safe use of pesticides" has been broken time and again, from numerous such instances. In the writ petition, the alarming situation in Punjab with regard to environmental health has been described, we presented evidence of endosulfan poisoning in Kerala, we described the numerous instances when Indian export consignments got rejected due to objectionable chemical residues in such consignments, we presented the poisoning of children through their mid day meal in Bihar (from the lack of safe disposal of pesticide containers), we explained that illegal use of pesticides occurs especially in the case of herbicides like Glyphosate where it is being sold and used on crops other than what Glyphosate has been registered for in India. The regulators and this Court also received a special submission by the Centre for Pesticide Suicide Prevention, United Kingdom, which contained evidence on how human suicides can be prevented to a large extent by removing some deadly pesticides that are used for killing oneself. It is clear that many gaps exist in regulation that lead to such alarming conditions of pesticide usage, and consequent impacts in the country. In such a situation, the only way to uphold the Right to Life of farmers and

farm workers is to remove these deadly pesticides from their vicinity. However, Union of India's counter affidavit ignores all of this, and presents inadequate responses on surveillance system for pesticide residues set up in a few markets in Delhi (the most number of pages in the response are devoted to this, for example), or on how the farmers and farm workers are at fault. We submit to this Hon'ble Court that this attitude to the victims of pesticides' adverse effects is unfair when it is the regulatory regime, techno-scientific establishment, our extension system and our pesticides industry which have failed our farmers and farm workers on this front. Farmers are caught in a vicious treadmill, which affects their health, their farming eco-system and their farm economics. In turn, consumers' health is negatively affected too – namely the entire population of India.

8. That we reiterate our point that the Government of India and its regulators do not have a dynamic surveillance system that is watching out for pesticides that have been banned elsewhere. We respectfully submit that any pesticide that has been banned in any other country because there is evidence of its adverse effects on human health, animal health and environment in general or there is

serious apprehension of such adverse effects should be banned in India. Our real life experiences in India also showcase the potential danger of these pesticides quite amply. More importantly, it is also proven that farming is possible without the use of such pesticides. In such a situation, it is unconscionable and inappropriate for the regulators to continue to argue that these pesticides need to be continued for their use in India, and that we cannot evolve a system of automatic review of pesticides registered and used in India, triggered by the decisions of other countries.

9. That the Petitioners submit to this Hon'ble Court that there are at least 40+ pesticides that India is importing from countries which have themselves banned those very pesticides in their own countries, or from corporations which operate and manufacture pesticides in a third country when the same pesticide is banned in the country of the corporation's head office e.g. Bayer Crop Science, Germany. The information we cite to illustrate this is taken from the PPQS/CIBRC website (see no. 4 http://ppqs.gov.in/divisions/cib-rc/registered-products). These include:

   i. Acephate (banned in China, imported from China)
   ii. Alachlor (banned in the EU, imported from Monsanto USA which is now owned by the German corporation Bayer Crop Science)

iii. Atrazine (not approved in the EU, imported from Italy and the UK)
iv. Bendiocarb (not approved in the EU, imported from Bayer USA)
v. Bitertanol (not approved in the EU, imported from an Israeli company for Bayer Crop Science)
vi. Butachlor (not approved in the EU, imported from Monsanto USA now owned by the German corporate Bayer Crop Science)
vii. Carbendazim (not approved in the EU, imported from the German corporation BASF)
viii. Carbofuran (not approved in the EU and banned in China, imported from Hungary in the EU and from China)
ix. Coumatetralyl (not approved in the EU, imported from Bayer Crop Science Germany)
x. Dichlorvos (DDVP) (banned in the EU, imported from Shell, UK)
xi. Dinocap (not approved in the EU, imported from Dow, Italy)
xii. Ethion (Diethion) (not approved in the EU, imported from Switzerland and Denmark)
xiii. Fenitrothion (not approved in the EU, imported from Novartis, Switzerland and Bayer, Germany)
xiv. Fenobucarb (not approved in the EU, imported from Bayer, USA, which is a German corporate)
xv. Fipronil (not approved in the EU, imported from BASF, France, which is a German corporate, and from Bayer China, Bayer France and Bayer USA, also a German corporate)
xvi. Flufenoxuron (not approved in the EU, imported from the UK)
xvii. Flusilazole (not approved in the EU, imported from DuPont, France)
xviii. Hydrogen Cyanamide (not approved in the EU, imported from Germany)
xix. Imazethapyr (not approved in the EU, imported from BASF USA, a German corporate)
xx. Iprodione (not approved in the EU, imported from Bayer, France)
xxi. Methabenzthiazuron (not approved in the EU, imported from Bayer Germany/India and from Italy)
xxii. Methomyl (banned in China, imported from China)

xxiii. Methyl Bromide (banned in China and not approved in the EU, imported from China and from France, the UK and Belgium)
xxiv. Metsulfuron Methyl (banned in China, imported from China)
xxv. Monocrotophos (banned in China and not approved in the EU, imported from China, Taiwan/China, and the UK, the Netherlands, and Italy)
xxvi. Oxadiargyl (not approved in the EU, imported from Bayer France)
xxvii. Oxydemeton-Methyl (banned in the EU, imported from Bayer Germany)
xxviii. Paraquat dichloride/Paraquat (not approved in the EU, imported from Syngenta UK)
xxix. Permethrin (not approved in the EU, imported from the UK)
xxx. Phenthoate (not approved in the EU, imported from Italy)
xxxi. Phorate (not approved in the EU, imported from the UK)
xxxii. Phosalone (not approved in the EU, imported from France)
xxxiii. Phosphamidon (banned in China, imported from Taiwan/China)
xxxiv. Propergite (not approved in the EU, imported from Italy)
xxxv. Propetamphos (not approved in the EU, imported from Syngenta Switzerland and Irvita, the Netherlands)
xxxvi. Propineb (not approved in the EU, imported from Bayer Germany/India)
xxxvii. Propoxur (not approved in the EU, imported from Bayer Germany and from Italy)
xxxviii. Thiodicarb (not approved in the EU, imported from Bayer USA, a German corporate)
xxxix. Triazophos (not approved in the EU, imported from Bayer Germany)
xl. Trifluralin (not approved in the EU, imported from Bayer)
xli. Zineb (not approved in the EU, imported from Italy)

Out of these 41 pesticides, only 8 received a strong recommendation by the Anupam Verma Committee, that too mainly in the form of phasing out of by 2020. Petitioners are conscious of how the Government of

India delayed implementing the recommendations of even unambiguous ban recommendations that came in, in Year 2015, to bring them in only in August 2018. In the case of Trifluralin, the Government of India did not ban the same, but kept it "restricted" for use in wheat. All of this is clearly a case of double standards being adopted in the case of Indian citizens, who are being subjected to deadly chemicals manufactured by corporations whose home countries have protected their own citizens by banning the same chemicals. The least that India needs to do is to stop importing these pesticides that have been banned in the exporting country and place a ban on these pesticides immediately.

10. That out of the 27 pesticides that Anupam Verma Committee recommended for further review in 2018, the following 23 pesticides have been banned in 3 or more countries (note that the EU is considered as 'one country' however the EU comprises 28 countries and has a population of over 500 million) or in the EU, as per the Pesticides Action Network consolidated list (last updated in April 2017), latest information from the EU pesticides database (ec.europa.eu/food/plant/pesticides/eu-pesticides-database/), and as per Anupam Verma Committee recommendations:

    i. 2,4-D (3 Nos +)

ii. Acephate (4 Nos +, incl. EU)

iii. Atrazine (10 Nos, incl. EU)

iv. Benfuracarb (not approved in EU, restricted in Korea)

v. Butachlor (4 Nos, incl. EU)

vi. Captan (6 Nos +)

vii. Carbendazim (not approved in EU, banned in Mozambique, restricted in Sweden)

viii. Carbofuran (22 Nos inc. EU)

ix. Chlorpyriphos (banned in Saudi Arabia, Palestine, Sri Lanka and restricted in 4 countries)

x. Dicofol (18 Nos + incl. EU)

xi. Dimethoate (4 Nos +)

xii. Dinocap (not approved in EU, banned in Korea, Argentina and Sweden)

xiii. Diuron (banned in Mozambique, Angola, Russia, withdrawn in Sweden)

xiv. Malathion (banned in Syria, Palestine, restricted in Sri Lanka, Canada and Korea)

xv. Mancozeb (banned in Saudi Arabia, Libya, restricted in Korea and Sweden)

xvi. Methomyl (13 Nos)

xvii. Monocrotophos (33 Nos incl. EU)

xviii. Oxyfluorfen (banned in Mozambique, restricted in 6 countries, withdrawn in Norway)

xix. Quinalphos (4 Nos, incl. EU)

xx. Thiodicarb (not approved in EU, banned in Mozambique, restricted in Belize)

xxi. Thiram (banned in Germany, Denmark, Sweden, restricted in Korea and Russia)

xxii. Zineb (6 Nos, incl. EU)

xxiii. Ziram (banned in Brazil, Denmark, Russia and restricted in Sweden)

While Anupam Verma Committee recommended the review of 27 pesticides in 2018, with 23 of them banned in three or more countries already, there is no public information available on whether the Union of India has initiated such a review as yet (i.e. in November 2018). This is clearly a case of the Government of India risking the biosafety of its citizens.

11. That pesticides recommended by Anupam Verma Committee for continuation have received strict action of bans/restrictions elsewhere, meanwhile, of the 18 pesticides that Anupam Verma Committee

recommended for continuation in India, the following 15 received strict action of bans or restrictions in other countries, whereas Indian citizens are being subjected to the hazardous effects of these deadly poisons:

i. Aluminium Phosphide (banned in China, Korea and restricted in 6 countries, restricted in India too)
ii. Bifenthrin (3 Nos)
iii. Carbosulfan (at least 13 Nos, incl. EU)
iv. Chlorfenapyr (not approved in the EU's 28 countries)
v. Chlorothalonil (banned in Columbia, Saudi Arabia, Palestine, Sweden)
vi. Dazomet (Denmark, Palestine)
vii. Fenpropathrin (not approved in EU, banned in Malaysia, restricted in Korea)
viii. Iprodione (not approved in EU, banned in Mozambique, Denmark)
ix. Kasugamycin (not approved in EU, withdrawn in Japan, restricted in Belize)
x. Mepiquat Chloride (banned in Norway, restricted in Belize)
xi. Paraquat Dichloride/Paraquat (20 Nos, incl. EU)
xii. Pretilachlor (not approved in EU, banned in Russia)

xiii. Propergite (also spelt as Propargite) (not approved in EU, banned in Pakistan and Saudi Arabia)

xiv. Propineb (not approved in EU)

xv. Zinc Phosphide (banned in China, Mozambique, restricted in Germany)

The petitioners submit to this Hon'ble Court once again that when farming is possible without the use of these pesticides, as evidenced in the Package of Practices evolved by the ICAR / NARS establishment (Ref:http://www.iifsr.res.in/npof/data/uploads/files/package_of_practices.pdf), it is not clear why the regulators persist with these deadly chemicals.

12. That thepPetitioners submit to this Hon'ble Court that a total of 55 pesticides are currently bannable that the Anupam Verma Committee did not even study. These include Edifenphos (not approved in the EU, banned in 3 other countries), Ethion (not approved in EU, banned in 2 other countries), Ethylene Dichloride and Carbon Tetrachloride mixture (not approved in EU, banned in 19 other countries), Fipronil (not approved in the EU, banned in Uruguay and 7 African countries), Methyl Bromide (not approved in the EU, banned in China, Korea and 5 other countries), Oxydemeton-Methyl and Phenthoate (both banned in the EU

and 2 other countries), and the remaining listed pesticides banned in 1 or 2 countries (many of which include the EU, itself a unit comprising 28 countries). It is clear that the continuation of these pesticides is unsafe.

13. That it is absolutely clear that a review of and decisive action on the remaining bannable pesticides is pending, including of the 27 pesticides that should have been reviewed in 2018 as per the Anupam Verma Committee report. To begin with, India should immediately stop importing those pesticides which are banned for use in the country in which they are manufactured (e.g. the countries of the EU or China), or banned for use in the manufacturer's home country but manufactured in a third country (in the case of the multinational corporations BASF, Syngenta, and Bayer Crop Science/Monsanto).

REGULATORY REGIME'S SHORTCOMINGS

14. That the contention of the Respondents that they do not recognise the work of the Pesticide Action Network (PAN) is not tenable, given that what is needed is a strong surveillance system that captures information on bans being imposed, in a dynamic fashion, and a

system that takes pro-active action related to frequent reviews. It is seen that there is no systemic review required by law in the country, no consistent norm set up for this so far, and that any review takes place only based on the political will of the ruling government.

15. That in terms of data systems that are also accessible to the public is missing, these are databases that the CIBRC regulators should be maintaining online, like the way European Union maintains. For each individual pesticide, there should be a webpage and a document that shares data generated, conclusions made, and the basis and process by which decisions have been made for approval, or restriction or ban. The European Union has less than half the population of India. Its farmers have larger landholdings and access to information and the required safety equipment for handling pesticides. Funding constraints cannot justify the lack of care evident by the way the CIBRC and Ministry of Agriculture are handling the pesticide industry. This is a multi-crore Rupees industry and a share of the profits could easily be directed to long-pending improvements in the regulatory regime, and towards a serious promotion of alternatives.

16. That the petitioners once again submit to this Hon'ble Court that biosafety testing for pesticide registration in India is ridden with conflict of interest and shrouded in secrecy. The commercial players interested in making money out of a pesticide are the ones who the CIBRC demands generate the data proving its safety. Such data is not shared in the public domain nor put for independent scientific scrutiny. Long term testing for chronic impacts is not taken up. Importantly, there is no needs and alternatives assessment taken up for looking at effective non-chemical pest management solutions, before these synthetic pesticides are registered.

17. That these issues have been raised in the original petition but have received no response. We have pointed out to the weak progress in terms of banning deadly pesticides in India, even as there is a situation of widespread contamination, bio-accumulation, increasing use of herbicides, clearly-evident acute and chronic poisonings, and widespread suicide by pesticide consumption across the country. We emphasised on the need to promote alternative non-chemical pest management practices and showed that organic or agro-ecological farming approaches are equally productive,

presenting a win-win situation for farmers, consumers and environment. What is needed is a precautionary approach to synthetic pesticides which is sorely missing now in the Indian regulation.

18. That the petitioners submit that the situation is dire with regard to pesticides in India, also because the regulatory regime constitutes a serious conflict of interest, given that the Ministry of Agriculture believes and promotes chemical pesticides, whereas it has also been charged with regulating this hazardous technology.

19. That the Petitioners would like to illustrate their point about the sad state of regulatory affairs, drawing from the counter affidavit filed by the Secretary of the CIBRC, Shri DDK Sharma. For example, in point 3 H of the counter-affidavit (pp. 19-20), it is stated that Insecticide Inspectors are appointed "in such number as it [the government] thinks fit and possessing such technical and other qualifications as may be…further that no person who has any financial interest in the manufacture, import or sale of any insecticide shall be so appointed." The petitioners would like to draw this Hon'ble Court's attention to the fact that in many [even large] states, that are

reportedly no such inspectors, and also, that from our interactions with pesticide dealers, it is apparent that the Inspectors that do visit them are unconcerned with practices of pesticide sales (i.e. pesticides sold to be used for non-approved uses), rather they only take samples of a few pesticides, and check for pesticides that have passed their expiry date. It can be mentioned that on the PPQS website, a list of the total number of pesticide inspectors per state is given for each year. Yet nowhere is the information provided to civil society, as to who these inspectors are. For example, in research undertaken in Jharkhand in 2017 and 2018, several agricultural department officers told the researchers that the posts of pesticide inspectors lie vacant, a copy of report prepared by Society for Promotion of Wastelands Development has been marked and annexed as **ANNEXURE R – 5**. Yet according to the PPQS website there have been 43 Inspectors from 2011-2012 to 2015-2016 (S.No. 14 at http://ppqs.gov.in/divisions/pesticides-monitoring-documentation?page=1). It is also clear that there is a huge discrepancy nationwide in the number of pesticide inspector positions. For example, Punjab had 360 inspectors in 2015-16, and used 5743 MT of pesticide in the same year. Kerala had 1204 inspectors in 2015-16, but consumed 1123 MT of pesticide in that

year. And Jharkhand, as mentioned, is recorded to have 43 inspectors (although this is questionable) and consumed 493 MT of pesticides in 2015-16. Meanwhile, many pesticides are sold without their leaflets, which means that farmers have no information about which crop they can spray a particular pesticide on and how. Shopkeepers tell farmers that they can use a pesticide on various crops for which it has not been registered in the first instance. No waiting periods are observed, no safety precautions taken, no dosages followed. In fact, the UoI's counter affidavit clearly states that no one is obligated to provide trainings to farmers, but that the Insecticides Act's emphasis is only for workers in manufacturing facilities and commercial pest control operations. Something is clearly amiss here.

20. That the lack of pro-active public interest action by the regulators is evident from the fact that other countries are taking a more progressive approach to this matter. The EU, as of April 2017, had banned at least 49 pesticides, but more importantly, had NOT approved another 197 pesticides. Brazil had banned 76 pesticides, Korea 65 pesticides, Saudi Arabia 65, Cameroon 56 pesticides, China 46 bans etc. India had just 31 bans as per the earlier list of June 2014, so the updated list after 18th August 2018 would take it to 43

bans. This, in a country which leads the organic farming movement in the world, is a matter of concern.

21. That despite Agriculture being a state subject in the Constitution of India's Seventh Schedule, the Union of India's legislative shortcomings and lack of prompt action are thwarting the pro-active efforts of state governments to protect their citizens. Instead of state governments being empowered to prohibit specific pesticides, it is the central government's regulators who are having the authority to do so.

22. That the petitioners conclude by pointing out that the requirement of immediate banning of certain deadly pesticides, along with the phasing out of other pesticides should be complemented by promotion and scaling up of ecological agriculture on a large scale, for which a road map has to be devised and invested upon.