IN THE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

I.A NO. OF 2018

IN

WRIT PETITION (CIVIL) NO. 1079 OF 2017

In the matter of:

Kavitha Kuruganti & Ors. …Petitioners

Vs.

Union of India & Ors. …Respondents

APPLICATION FOR DIRECTIONS BY THE HON'BLE COURT

To,

The Hon'ble Chief Justice and Other Companion Judges of

the Hon'ble Supreme Court of India

Humble Application of
the Petitioner abovenamed

MOST RESPECTFULLY SHOWETH:

1. That the Petitioners have filed the present petition seeking a ban on at least 99 pesticides that India uses that other countries have banned due to the hazards involved with their use including health hazards, seeking to make it

mandatory to follow the precautionary principle before registering any pesticide for use or manufacture, seeking to make it mandatory to perform a needs and alternatives assessment before registering any pesticide and further seeking appointment of an expert committee comprising of individuals of unimpeachable integrity mainly from the field of Organic Agriculture / agro-ecology to examine the issue of a roadmap for phasing out all chemical pesticides in a time bound manner, preferably within 5 years, and for making recommendations on the assistance to be given by the Central and State Governments to farmers for the period of time it will take for their farms to convert to chemical pesticide free organic farms, as well as for providing the requisite impetus to organic farming in the country.

BACKGROUND TO RECENT DEVELOPMENTS

2. This Hon'ble Court, while hearing this petition on 19.03.2018, was told by counsels of Respondent No. 1 Union of India and the intervener Crop Care Federation of India that another Committee had been constituted, headed by Dr J S Sandhu, after an earlier 'Expert Committee' called the Anupam Verma Committee (constituted by the Government of India in 2013), which was formed to review 66 pesticides that have been banned or severely restricted in one or more countries elsewhere, which gave its report in 2015 and *inter alia* recommended for complete ban of 13 pesticides (including DDT) from 1st January 2018, in addition to recommending that 6 other pesticides be phased out by 2020, ***that 27 pesticides be reviewed again in 2018 after completion of recommended studies***, that one pesticide ban (of Fenitrothion) be continued, and that 18 pesticides be

continued. The Anupam Verma Committee did not review Endosulfan given that the matter is sub-judice. These then were the set of recommendations by the Anupam Verma Committee after reviewing 66 pesticides. (Attached is a Government of India Reply to Q.No.2272 in Rajya Sabha, dated 04/08/2017 on "Ban on Pesticides", as Annexure A)

3. In the March 19th 2018 hearing, this Hon'ble Court permitted the petitioner to file a representation before the Committee headed by Dr J S Sandhu within fifteen days. This Hon'ble Court further ordered that since the matter is of urgent nature, the Committee has to finalise its recommendations expeditiously, preferably within three months, and if a decision is taken to ban a particular pesticide, to be implemented fifteen days thereafter. The Orders of 19/03/2018 also asked for the report of the Committee to be placed before this Hon'ble Court. (Attached herewith is the 19/03/2018 court order as Annexure B)

4. When the petitioners sent their representation on March 27th 2018 to the ICAR headquarters to be submitted to Dr Sandhu's Committee, the petitioners discovered to their surprise that Dr J S Sandhu had retired in July 2017 itself and that no such J S Sandhu Committee was functioning. After inquiries and communication initiated with the Central Insecticides Board and Registration Committee Secretariat, the petitioners were informed on 16th April 2018 that in October 2017, a reconstituted Committee started functioning, with Dr S K Malhotra, Agriculture Commission, Department of Agriculture and Farmers' Welfare as the Chairperson. The petitioners

subsequently filed their representation in Krishi Bhawan, on 18th of April 2018.

INDIA CONTINUES WITH MANY PESTICIDES THAT ARE "BANNABLE"

5. As stated in the original petition to this Hon'ble Court, the petitioners submitted to Dr S K Malhotra Committee the serious limitations of the Anupam Verma Committee (given the fact that it was asked to review only 66 pesticides whereas there are at least 99 pesticides which are "bannable" in terms of their ban or severe restriction elsewhere), its mandate and functioning. The petitioners also pointed out that health experts are not being included in these Committees which poses a serious limitation to progressive decisions that need to be taken with regard to hazardous pesticides. Petitioners drew the attention of the Committee to fact finding visits that the petitioners undertook in Vidarbha of Maharashtra and Tamil Nadu of pesticide poisonings of farm workers and farmers, and shared the reports. The petitioners also repeated their prayers to this Hon'ble Court in their representation to the S K Malhotra Committee (Attached herewith as Annexures C1 and C2)

6. In the interim, on May 30th 2018, the Centre for Pesticide Suicide Prevention, Edinburgh University, also sent in their Expert Submission to the Malhotra Committee, presenting evidence and reasoning as to why banning certain deadly pesticides is critical. (Attached herewith is the expert submission of Centre for Pesticide Suicide Prevention, Edinburgh University, UK as Annexure D)

7. On 8th August 2018, following this Hon'ble Court's March 19th 2018 Orders, 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, Methyl Parathion, Sodium Cyanide, Thiometon and Tridemorph), a prohibition and ban on Trifluralin except for use in wheat, and phasing out orders on 6 more pesticides (Alachlor, Dichlorvos, Phorate, Phosphamidon, Triazophos and Trichlorfon) to implement the recommendations of the Anupam Verma Committee with regard to these 18 pesticides, more or less in line with the Committee report. (Attached is the Prohibition Order as Annexure E). This is a welcome, long-pending move from the government, given that the Anupam Verma Committee recommended way back in 2015 itself that such a ban be brought into effect from 1st January 2018.

THE RECENT NOTIFICATION IS ONLY A SMALL STEP IN THE RIGHT DIRECTION BUT A LOT MORE NEEDS TO BE DONE TO REMOVE THE THREAT OF PESTICIDES IN OUR FARMING AND FOOD SYSTEMS:

8. The petitioners humbly submit to this Hon'ble Court that the matter of many other deadly pesticides being continued to be used in India is a matter of grave concern. In our original petition in October 2017, we had presented data to show that at least 99 pesticides that have been banned by other countries have been allowed for manufacture and use in India by successive governments. ***A revised comparison of registered***

pesticides in India with bans in other countries (one or more other countries) shows that the list is actually of 103 such pesticides, whereas the Anupam Verma Committee had reviewed only 66 pesticides out of which the August 2018 Gazette Notification took decisive action on only 18 pesticides (within which 6 will be phased out only by 2020). Petitioners also have evidence to show from official consumption data that several of the pesticides covered in the said Ban Order were in any case not being consumed in a negligible fashion, which ***points to the fact that the Anupam Verma Committee seemed to have taken the easier option of banning those which were being used in low or negligible manner in any case***. (Annexure F).

9. ***This means that India is continuing to have at least 85 pesticides on which positive action is still awaited so that human lives, health and environment can be protected from the harmful effects of such pesticides.*** (List of these 85 pesticides is annexed herewith as Annexure G) The fact that such deadly pesticides are being continued when they have seen concrete action elsewhere, based on their lack of safety and the fact that their continuation happens at a time when there is much evidence of the success of ecological agriculture practices (without the use of synthetic pesticides and fertilisers, whether called as organic farming or natural farming, or zero budget natural farming or biodynamic farming etc.) in terms of profitability for farmers as well as productivity of the crops, is distressing and objectionable.

10. Petitioners' fact finding visits to investigate the acute pesticide poisonings in Maharashtra and Tamil Nadu in

late 2017 shows that pesticides like Acephate, Monocrotophos, Diafenthurion, Profenophos, Carbendazim, Mancozeb, Cypermethrin, Fipronil, Imidacloprid etc. were involved in these poisonings. (The fact finding reports from Yavatmal and from Tamil Nadu, on acute pesticide poisonings are being attached herewith as Annexure G1 and G2 respectively).

11. In a reply to a Rajya Sabha Question (No. 808, dated 09/02/2018), the Government of India stated that as per the information received from Maharashtra Agriculture Department, the suspected pesticides for poisoning are: Monocrotophos 36 % SL, Profenophos 40 % + Cypermethrin 4 % EC, Fipronil 40 % + Imidacloprid 40 % WG, Acephate 75 % SC and Difenthiuron 50 % WP. **However, no steps are being taken to ban such pesticides.** (Attached is the RS reply, as Annexure H)

HUNDREDS OF DEATHS DUE TO PESTICIDE INHALATION POISONINGS

12. Some of these pesticides implicated in poisonings resulting in deaths and hospitalisations have not even been reviewed by the Anupam Verma Committee (Profenophos, Cypermethrin, Fipronil, Imidacloprid and Difenthiuron for instance). On 16th March 2018, in response to a Lok Sabha Unstarred Question (No. 3561), the Minister of State for Health and Family Welfare provided the details of deaths caused by inhalation of pesticides for the years 2015-16 to 2017-18 and stated that details of hospitalization are not available. (Attached is LS Reply, as Annexure I). ***As per this reply on the floor of the Parliament, 442 such deaths had happened in 5 states, whereas other states have no such reports or no data given to the Govt of India.*** A

2014 report called SERVING DEATH by the petitioners had compiled data from earlier years of such acute pesticide poisonings as stated in Parliament Replies and points out how ***the government has no systematic data system maintained for the same and does gross under-reporting when it presents any numbers.*** (Annexure J has a copy of the report Serving Death, by India For Safe Food, a campaign platform with which petitioners are associated).

ANUPAM VERMA COMMITTEE RECOMMENDED FURTHER REVIEW OF 27 PESTICIDES THIS YEAR – NO MOVEMENT WITNESSED ON THIS FRONT, HOWEVER:

13. Petitioners submit that the Anupam Verma Committee recommendations were not limited to a ban of 13 pesticides or phasing out of 6 pesticides which have been effected through the August 2018 Pesticides Ban Order. The Expert Committee recommended 27 pesticides to be reviewed in 2018, after completion of recommended studies. These pesticides include: Acephate, Atrazine, Benfuracarb, Butachlor, Captan, Carbendazim, Carbofuran, Chlorpyriphos, Deltamethrin, Dicofol, Dimethoate, Dinocap, Diuron, 2,4-D, Malathion, Mancozeb, Methomyl, Monocrotophos, Oxyfluorfen, Pendimethalin, Quinalphos, Sulfosulfuron, Thiodicarb, Thiophanate methyl, Thiram, Zineb and Ziram. As mentioned already, several are implicated in acute pesticide poisoning deaths and hospitalisations. Meanwhile, in the case of 18 other pesticides that the Expert Committee recommended for continuation, the petitioners would like to draw the attention of this Hon'ble Court that there are some pesticides like Carbosulfan (banned in 39 other countries), Fenpropathrin (banned in

29 countries), Paraquat Dichloride (banned in 38 countries) and Zinc Phosphide (banned in 4 countries).

INDIA'S USE OF CLASS I PESTICIDES IS A DIRECT THREAT TO THE RIGHT TO LIFE OF FARMERS/FARM WORKERS

14. Delhi-based environmental NGO Centre for Science and Environment reports that India has 18 Class I pesticides registered for use in India. Based on acute toxicity, Class Ia pesticides are categorized by the World Health Organisation as Extremely Hazardous and Class Ib as Highly Hazardous (this does not take into consideration chronic effects). Class Ia includes Bromadiolone, Methyl Parathion, Phorate, Phosphamidon; Class Ib includes Beta Cyfluthrin, Carbofuran, Coumatetralyl, Cyfluthrin, Dichlorvos (DDVP), Edifenphos, Methomyl, Monocrotophos, Oxydemeton-Methyl, Propetamphos, Sodium Cyanide, Thiometon, Triazophos and Zinc Phosphide. Only 11 out of these 18 Class I pesticides were reviewed by the Anupam Verma Expert Committee. Only 3 of these have been banned and 4 more to be phased out.

TERMS OF REFERENCE OF SANDHU/MALHOTRA COMMITTEES VERY NARROW AND DO NOT COVER THE ISSUE OF MANY DEADLY PESTICIDES BEING CONTINUED:

15. It is further submitted to this Hon'ble Court that the Terms of Reference given to the J S Sandhu Committee/SK Malhotra Committee were very limited in that they were only asked to evaluate the objections and suggestions received in response to Gazette Notification

No. SO 5212(E) dated 15-12-2016 regarding banning of pesticides order, and to recommend further course of action for final notification in this regard, and the said Gazette Notification with a draft ban order was limited to 18 pesticides only. (Attached are Annexures K and L on the constitution of the two Committees, and Annexure M of Notification with draft ban order)

WEED-KILLERS LIKE GLYPHOSATE ARE PARTICULARLY HAZARDOUS, BUT ARE NOT BEING REVIEWED FOR SAFETY IN INDIA DESPITE THEIR RAMPANT ILLEGAL USE

16. The petitioners would like to draw the attention of the Hon'ble Court to the fact that a highly controversial weed-killer called Glyphosate, with significant scientific evidence on its numerous adverse health and environmental impacts, which is the largest imported pesticide into India, which also has one of the largest number of indigenous manufacturers, exhibiting a significant increase in its consumption in illegal/unapproved ways, and which also has been classified as a probable human carcinogen by the World Health Organisation, has not been reviewed by the Anupam Verma Committee. Meanwhile, a San Francisco Court has just ordered an agro chemical giant called Monsanto to pay $289 millions after a jury ruled that the weed-killer glyphosate caused the plaintiff Dewayne Johnson's cancer. Important in this litigation and its verdict is the fact that Monsanto knowingly suppressed data related to lack of safety of its product. A published scientific study by Indian scientists points to the carcinogenic potential of glyphosate. (Guardian news

article on this important development is attached as Annexure N)

REVIEW COMMITTEES ARE NOT HAVING HEALTH EXPERTISE OR ECOLOGICAL AGRICULTURE EXPERTISE

17. In the Anupam Verma Expert Committee, as well as the previous review committees set up by the Government of India for reviewing the continued manufacture/use of specific pesticides in India, there have been no health experts nor public-spirited civil society experts who have experience in alternatives to toxic chemicals when it comes to plant protection. On the other hand, these Committees have been heavily influenced by pesticides industry's participation as well as agriculture scientists whose expertise has been in synthetic pesticides based plant protection. The petitioner contends that this is a serious lacuna that has affected decision-making and concrete action with regard to deadly pesticides that are affecting the very right to life of farmers and farm workers.

STATE GOVERNMENTS ARE POWERLESS TO TAKE ACTION AT THEIR END DESPITE CONSTITUTION OF INDIA HAVING THE SUBJECT UNDER LIST II (STATE LIST) OF ARTICLE 246, SEVENTH SCHEDULE AND DESPITE STATE GOVERNMENTS KNOWING THE DANGERS OF PESTICIDES/ALTERNATIVES TO THESE POISONS

18. It is also submitted that the regulation with regard to both registration and prohibition/ban being too centralized with the Union of India, state governments are unable to exercise their authority in their states with regard to prohibiting and stopping the manufacture,

distribution, sale and use of pesticides found to be harmful in their respective jurisdictions.

19. Article 246, Seventh Schedule of the Constitution of India explicitly places under List II (State List), Item No. 14 which is "Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases". This then clearly places the authority and mandate of taking care of crop protection by the means best suited to it, on state governments. However, under the Insecticides Act 1968, through Sections 12 and 13, state governments have been given only the powers of licensing. Section 27 of the Insecticides Act 1968 has given only limited powers to the state governments, pending investigation, for only 60 days extendable by another 30 days, for prohibition of sale of insecticides for reasons of public safety. Even this has to be done by notification in the official Gazette. The prohibition orders, if any, after its own investigation or on receipt of reports from the state government, is to be passed by the Central Government.

20. Punjab government had put out an Order on 30th January 2018, on the subject of "Regulation of Sale of Insecticides in Punjab", wherein, the Special Secretary, Agriculture, Department of Agriculture and Farmers' Welfare, ordered the sale of 20 insecticides to be discontinued immediately. These included Phosphamidon, Trichlorofon, Benfuracarb, Dicofol, Methomyl, Thiophanate Methyl, Endosulfan, Bifenthrin, Carbosulfan, Chlorfenapyr, Dazomet, Diflubenzuron, Fenitrothion, Metaldehyde, Kasugamycin, Ethofenprox, Phorate, Triazophos, Alachlor and Monocrotophos. However, this order was found to be untenable in the

absence of a Gazette Notification and the Punjab and Haryana High Court set aside the Government Order. While the state government did issue a gazette notification subsequently, since it could do so for only 60 days under Section 27 of the Insecticides Act 1968, the state government had to reportedly continue with the sales, despite knowing that the Punjab Agriculture University has not recommended these pesticides for any crops in their Package of Practices and despite knowing that these are hazardous chemicals. (Attached herewith are related material including the impugned Order, the Punjab & Haryana High Court Orders in these related cases as Annexure O1, O2, O3 and O4).

21. Similarly, the Maharashtra Government, after the spate of pesticide poisoning deaths last year, had to face High Court cases which involved questions around banning of sales, distribution and use of insecticides. The state government had indeed banned some insecticides through a notification dated 1/11/2017 for a period of 60 days, which is what the state government is authorized to, under the Insecticides Act 1968 (Section 27). The state government subsequently wrote to the Central Insecticides Board and Registration Committee (the regulatory body for pesticides in India, under the Insecticides Act 1968), proposing the permanent ban on sale, distribution and use of Acephate 75% SP, Monocrotophos 36% SL, Diafenthiuron 50% WP, Fipronil 40% + Imidacloprid 40% WG and Profenofos 40% + Cypermethrin 4% EC. Maharashtra state government also recommended the permanent banning of insecticides which are in the Extremely Hazardous classification of WHO (red triangle) and those insecticides whose antidotes are nto available and the treatment of such affected

persons are done only as symptomatic treatment. ***From information available in the public domain, it appears that the CIBRC did not take any action on these important recommendations, based on reality of experience of Maharashtra government. (***Attached herewith is the Maharashtra ACS's letter to CIBRC, Govt of India as Annexure P)

22. ***The petitioners submit that this lack of authority with state governments is against the Seventh Schedule of the Constitution, wherein Item 14 under List II makes agriculture and plant protection, the subject of state governments.***

RIGHT TO LIFE SERIOUSLY THREATENED: DEATHS AND HOSPITALISATIONS OF FARM WORKERS AND FARMERS ARE CONTINUING IN THE STATES RIGHT NOW:

23. The petitioners humbly submit that the continued use of deadly pesticides is a major threat to the Right to Life of farm workers and farmers. Just in terms of acute poisoning, without even getting into chronic health impacts, the situation is alarming and needs urgent action to remove deadly poisons from the scene. This year too, reports of pesticide poisoning deaths and hospitalisations are trickling in, by the end of August 2018. On crops like cotton, at least two more months of spraying of pesticides will continue. 84 cases of hospitalization in Yavatmal in Vidarbha and 40 cases including a death in the government hospital in Akola of Maharashtra stand testimony to this danger. In Adilabad of Telangana, one death and several hospitalisations are

reported. (Attached are very recent media reports on these tragic deaths and hospitalisations as Annexure Q).

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court, in view of the facts and circumstances explained above, may kindly be pleased to:

i) Direct the Union of India to review 85 other pesticides which are bannable, and execute recommendations from the review all within 6 months, by including into the review committee independent health experts working on the issue of health impacts of pesticides, by including state government representatives and by also including experts from the ecological agriculture field, and by taking the petitioners suggestions on board for the constitution of such a review committee.

ii) Pass orders that empower state governments to take state level prohibition and restriction decisions related to pesticides based on due processes adopted by them regarding the socio-economic, health and environmental impacts of pesticides.

iii) Pass any other order as the Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

FILED BY

PRASHANT BHUSHAN

ADVOCATE FOR THE PETITIONER

Drawn on: __.09.2018

FILED ON __.09.2018
PLACE: New Delhi