

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 2ND DAY OF DECEMBER 2013

: PRESENT :

HON'BLE MR. D.H.WAGHELA, CHIEF JUSTICE
AND

HON'BLE MR. JUSTICE S.N.SATYANARAYANA
WRIT PETITION No. 41532 / 2012 (GM-RES-PIL)

BETWEEN

1. ENVIRONMENT SUPPORT GROUP
(TRUST REGD. UNDER INDIAN TRUST ACT, 1882)
REPRESENTED BY MS. BHARGAVI S. RAO
AGED ABOUT 43 YEARS, TRUSTEE
D/O MR. SATHYANARAYANA RAO
1572, 100 FEET RING ROAD, 36TH CROSS,
BANASHANKARI II STAGE, BANGALORE-560 070.
2. MR. LEO F. SALDANHA
AGED ABOUT 44 YEARS, S/O S.J. SALDANHA
1, PEARL GARDENS, VAJARAHALLI,
KANAKAPURA ROAD, BANGALORE-560 062.

... PETITIONERS

(BY SRI SUNIL DUTT YADAV, ADVOCATE FOR P-1.
SRI LEO F. SALDANHA, P-2 PARTY-IN-PERSON.)

A N D

1. NATIONAL BIODIVERSITY AUTHORITY
REPRESENTED BY ITS CHAIRMAN
5TH FLOOR, TICEL BIO PARK, TARAMANI,
CHENNAI-600 113.
2. MINISTRY OF ENVIRONMENT & FORESTS
REPRESENTED BY ITS SECRETARY
PARYAVARAN BHAVAN, CGO COMPLEX
LODI ROAD, NEW DELHI-110 004.
3. KARNATAKA STATE BIODIVERSITY BOARD
REPRESENTED BY ITS MEMBER SECRETARY

GROUND FLOOR, VANA VIKASA
18TH CROSS, MALLESHWARA,
BANGALORE-560 003.

4. STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY
VIDHANA SOUDHA, BANGALORE-560 001.
5. UNION OF INDIA
REPRESENTED BY ITS CABINET SECRETARY
RASHTRAPATI BHAVAN, NEW DELHI-110 004.
6. M/S MAHARASHTRA HYBRID SEEDS CO. LTD.
RASHAM BHAVAN, 4TH FLOOR,
78, VEER NARIMAN ROAD, MUMBAI-400 020,
REPRESENTED BY ITS AUTHORITY SIGNATORY
MR. MAHENDRA MARUTRAO CHAVAN
7. TAMIL NADU AGRICULTURAL UNIVERSITY
COIMBATORE-641 003
REPRESENTED BY ITS REGISTRAR
MR. PATTIPPA SUBBIAN
8. SATHGURU MANAGEMENT CONSULTANTS PVT. LTD.
PLOT NO. 54, SAGAR SOCIETY, ROAD NO.2,
BAJARA HILLS, HYDERABAD - 500 034.
REPRESENTED BY ITS DIRECTOR,
KANNAN RAGUNATHAN.

... RESPONDENTS

(BY SRI ADITYA SONDHI, ADVOCATE FOR R-1 TO 3 & 5.
SRI NARENDAR G., A.G.A. FOR R-4.
SRI ASHOK HARNAHALLI, SR. ADVOCATE, A/W
SRI KOSHY JOHN, ADVOCATE FOR R-6.
SMT. S.AMRUTHA SINDHU, ADVOCATE FOR R-7.
SMT. RUBY K.JOSE, ADVOCATE FOR R-8.
SRI YESHWANTH SHENOY, INTERVENER,
PARTY-IN-PERSON.)

WRIT PETITION FILED PRAYING TO DECLARE SECTION
40 OF THE BIOLOGICAL DIVERSITY ACT, 2002 TO BE ILLEGAL
AND CONTRARY TO THE PRINCIPLE ENSHRINED IN ARTICLE

14 OF THE CONSTITUTION OF INDIA AND TO QUASH THE NOTIFICATION ISSUED BY RESPONDENT NO.2 UNDER SECTION 40 OF THE BIOLOGICAL DIVERSITY ACT, 2002 DATED 26.10.2009 VIDE ANNEXURE-C, ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, CHIEF JUSTICE MADE THE FOLLOWING:

O R D E R

D.H.WAGHELA, CJ (ORAL) :

1. The petition is filed under Articles 226 and 227 of the Constitution in the nature of Public Interest Litigation by a Trust in the name of Environment Support Group and one Mr. Leo F.Saldanha, has appeared as party-in-person. The petitioners have, subsequent to filing of the petition, added Respondent Nos.6, 7 and 8, with the main prayers *inter alia* to declare Section 40 of the Biological Diversity Act, 2002 (for short 'the Act') to be illegal and unconstitutional and to issue a writ in the nature of certiorari to quash the notification dated 26.10.2009 issued by Respondent No.2 under the provisions of Section 40 of the Act. The petitioners as well as the applicant in I.A.No.II/2013 viz., learned advocate Sri Yeshwant Shenoy, have sought to argue in detail, about serious prejudice likely to be caused

to the national interest and biodiversity of certain species of plants and herbs, if the notification in question is not quashed and proper guidelines were not to be issued under the Act by the National Biodiversity Authority.

2. Learned counsel Sri Aditya Sondhi, appearing for Respondent Nos.1 to 3 & 5, however, pointed out from the recent decision of the Apex Court in *Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India* [(2012)8 SCC 326], that by virtue of the observations made and directions issued in paragraph-40 of the judgment, the petition practically stands transferred to the National Green Tribunal and this court is required to pass only an appropriate formal order to release the matter to the National Green Tribunal, constituted under the National Green Tribunal Act, 2010.

3. In view of the submission of learned counsel Sri Sunil Dutt Yadav, appearing for petitioner No.1, that the National Green Tribunal may not have the jurisdiction to examine and decide upon the constitutional validity of the provisions of Section 40 of the Act, this court was required

to retain the petition for consideration, learned counsel Sri Sondhi relied upon seven judge Bench decision of the Apex Court in *L.Chandra Kumar Vs. Union of India* [(1997)3 SCC 261], and submitted that it was not open for the litigants to directly approach the High Court even in cases where they question the vires of statutory legislations by overlooking the jurisdiction of the Tribunal concerned. Sri Sondhi also relied upon the Constitution Bench decision of the Apex Court in *Union of India Vs. R.Gandhi*, (2010)156 Comp Cas 392 (SC), to submit that, although the National Green Tribunal was not constituted under Articles 323A and 323B of the Constitution, the Parliament had the legislative competence to make a law providing for constitution of Tribunals to deal with disputes and matters not covered by the aforesaid Articles.

4. It is clear and undisputable proposition of law settled by the aforesaid judgment that special tribunals can be constituted for the purpose of administration and implementation of particular laws. There is no dispute about the fact that, in the present case, the Biological Diversity Act, 2002 is expressly covered by Schedule-I and

the Tribunal constituted under the National Green Tribunal Act has the jurisdiction to decide all substantial questions relating to enforcement of any legal right arising out of implementation of the Act and settle such disputes and pass orders thereon. Therefore, abiding by the direction of the Apex Court in *Bhopal Gas Peedith Mahila Udyog Sangathan Vs. Union of India*, (supra), the petition, along with the interim applications made therein, is ordered to be transferred to the appropriate Bench of the National Green Tribunal for further adjudication and orders.

5. The petition as also the interim applications made therein stand disposed as transferred, as far as this court is concerned, without entering into merits, if any, of the other contentions of the parties.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

ckc/-