

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE
(ORIGINAL JURISDICTION)**

WRIT PETITION No. _____ /2011 (GM)

BETWEEN:

1. M/s.Endosulfan Manufacturers and Formulators Welfare Association (E.M.F.W.A),
Having its office at No.722,
Tulsiani Chambers, East Wing,
7th Floor, Free Press Journal Marg,
Nariman Point, Mumbai-400 021.
Represented by its
Executive Secretary
Mr. C. C. Abraham, aged 69 years
R/a No.79, Kumaranasan Nagar
Kadavanthra, Ernakulam
Kochi 682 020.
2. Excel Crop Care Ltd.
A Company incorporated under
Companies Act, 1956
Having its corporate office at
No.13, Aradhana Industrial
Development Corporation
Near Virvani Industrial Estate
Goregaon (East)
Mumbai 400 063.
Represented by its Dy.G.M. Dinesh Dave.
3. M/s Hyderabad Chemicals Limited.
A Company incorporated under
Companies Act, 1956
Having its registered office at:
4-3-475, Devika Mahal,
Bank Street,
Hyderabad- 500 095
Represented by its Senior Executive
A.G. Satheesh
4. M/s Bharath Insecticides Ltd.
A Company incorporated under
Companies Act, 1956
Having its corporate office at
1506,Vikram Tower,
Rajendra place,
Newdelhi 110 008
Represented by its Area Business Manager
L.ChannamallaReddy

Petitioners

AND:

1. State of Karnataka,
Represented by its Chief Secretary,
Vidhana Soudha,
Bangalore-560 001.
2. Kumari. Shoba Karandlaje,
Minister for Energy, Food & Civil Supplies,
Government of Karnataka, Vidhana Soudha,
Bangalore-560 001.
3. The Deputy Commissioner,
Dakshina Kannada District,
Mangalore.
4. The Assistant Commissioner,
Puttur Sub Division,
Puttur, D.K.District.
5. The Secretary to Government,
Health & Family Welfare Department,
Vikasa Soudha,
Bangalore-560 001.
6. The Additional Secretary,
Kannada & Culture, Information
and Tourism Department,
Vikasa Soudha,
Bangalore-560 001.
7. The Presiding Officer,
Social Security & Pensions,
Department of Revenue,
M.S.Building, Bangalore-5600 001.
8. The Tahasildar,
Belthangadi Taluk,
Dakshina Kannada District. ..Respondents

**MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA**

The petitioners above named respectfully submits as follows:

1. It is submitted that the 1st petitioner Endosulfan Manufacturers and Formulators Welfare Association (hereinafter referred to as EMFWA) is an Association registered under the provisions of Societies Registration Act, 1860. EMFWA's registered

office is at 722, Tulsiani Chambers, East Wing, Free Press Journal, Nariman Point, Mumbai- 400021. Members of EMFWA are involved in manufacture and marketing of Endosulfan, an insecticide, in domestic and global markets. 2nd Petitioner is a manufacturer of various agro-chemicals including Endosulfan. Petitioners 3 and 4 are in the business of formulating and marketing of Endosulfan under the brand names of Endocel, Hysulfan and Endocid. Hence, the petitioners are bonafide and competent to file this Writ Petition. Accordingly, the petitioners may kindly be permitted to present following facts.

2. It is submitted that the “Endosulfan” is a non-proprietary, generic insecticide that has been in commercial use for over 50 years. Its current global use is estimated to be 35 million litres making it to be among the top five generic, off patent agricultural insecticide in the world. India is world’s largest producer and exporter of Endosulfan. Endosulfan worth \$40 million was exported from India to various countries in the last financial year. India itself is a large market for Endosulfan with an estimated consumption of 120 million litres valued at Rs 360 crores at the retail level. World Health Organization (WHO) classifies pesticides based on their hazards as follows:

Class 1 a : Extremely Hazardous

Class 1b : Highly Hazardous

Class II : Moderately Hazardous

Class III : Slightly Hazardous

Endosulfan is classified under Class II (Moderately Hazardous) pesticide by the WHO. The broad spectrum of insects controlled by Endosulfan is matched by its very low toxicity against several important beneficial insects including honey bees that are essential for crop production of cross pollinated crops. India is the second largest producer of fruits and vegetables in the world and a majority of them are dependant on honey bees for pollination.

Indian Standards No IS 6695 classifies Endosulfan as an insecticide that can be used during flowering period as it does not adversely affect bee activity.

Recently, “Endosulfan” has been allowed in the USA for use as veterinary insecticide for controlling ecto parasites in milk cattle as well as beef cattle. Unlike other pesticides, pests have not developed resistance to “Endosulfan”.

It is submitted that "Endosulfan" is a registered insecticide in India under the provisions of the Insecticides Act 1968. Like all registered pesticides, toxicological profile of Endosulfan gets thoroughly studied by the experts of Registration Committee of Central Insecticides Board (CIB) under the provisions of the Insecticides Act 1968. In fact the preamble expressly states that is *“An Act to regulate the import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risks to human beings or animals and matters connected herewith”*. Because all the registered pesticides (including Endosulfan) undergo extensive screening and evaluation before the registration and periodical review after registration, it can be said that the approved uses of registered pesticides would not lead to any health risks to human beings or animals. At the recommended rate/s and method/s of application, Endosulfan is safe to man and environment and would not lead to any user or public health problems.

3. It is submitted that like all pesticides, toxicological profile of "Endosulfan" gets regularly evaluated by a special group of experts called Joint Meeting on Pesticides Residues (JMPR) appointed by World Health Organization (WHO) and Food and Agriculture Organization (FAO). Comprehensive review periodically carried out by International agencies such as World Health Organization and

Food and Agriculture Organization and they have placed the following observations on record.

- (i) "Endosulfan" is not carcinogenic i.e., it is not a human cancer causing agent.
- (ii) "Endosulfan" is not mutagenic i.e., it does not cause any genetic damage.
- (iii) "Endosulfan" is not teratogenic i.e., it does not cause birth defects.
- (iv) "Endosulfan" does not cause reproductive effects.
- (v) "Endosulfan" is not genotoxic.
- (vi) The International Agency for Research on Cancer (IARC), a body of World Health Organisation (WHO) has not classified "Endosulfan" to human carcinogenicity.
- (vii) "Endosulfan" residues, if accidentally enters the human/animal body, leave the body fairly quickly.

From these observations, it is crystal clear that due to use of "Endosulfan", the people will not suffer health problems like cancer.

4. It is submitted that Karnataka Cashew Development Corporation had been spraying various insecticides like "Carbaryl", "Quinalphos", "Monocrotophos" and "Endosulfan" in the Cashew Plantations located in Belthangadi Taluk since 1990s till 2001 to control the insect pests. It is pertinent to state that "Endosulfan" was one among several insecticides sprayed by Karnataka Cashew Development Corporation.

5. It is submitted that some environmental activists in Belthangadi Taluk made allegations in the media in the year 2004 that use of Endosulfan was causing health problems. On the basis of the report made in the media, Dr.M.P.Nadagowda, the Member of Legislative Council raised a question in Karnataka assembly. To his question, the Agriculture Department replied stating that only the Central Government had powers to register or ban pesticides and that that the State Government had no powers to ban. The

answer given in the assembly further said that there's no proof that the people or animals suffered due to use of "Endosulfan". It further clarified that in the village namely Kokkada and Patrame of Belthangadi Taluk, Dakshin Kannada District, the people were having the normal health problems commonly seen everywhere else.

6. As the reports in the media continued to carry allegations from environmental activists concerning Endosulfan the State Government formed a three member expert committee to study the matter and to submit a fact finding report. The said committee consisted of the following officials:

- (1) Sri.G.Prakash, Director of Agriculture, Bangalore.
- (2) Dr.Desai, Director of Heath, Bangalore
- (3) Dr.N.E.Thyagaraj, Assistant Director of Research, University of Agriculture Science, Moodigere.

The committee comprehensively studied the matter and finally submitted its report to the Government of Karnataka on 29-10-2004. The experts categorically stated in the report that the spraying of "Endosulfan" could not be the cause of alleged health problems in Beltangady taluk. The recommendations of the expert committee were announced on bysri. Mallikarjuna Kharge the then Hon'ble Minister for Water Resources on 14-04-2005 on the floor of the Legislative Assembly. The experts observed in their report that the health problems seen in Belthangadi Taluk were similar to one commonly seen everywhere and the spraying of "Endosulfan" could not be the cause for the alleged health problems. The said committee had observed in the report:

- (i) That the use of "Endosulfan" can be continued
- (ii) The "Endosulfan" is degraded in the environment within a short span of time.
- (iii) The "Endosulfan" is moderately toxic
- (iv) The use of "Endosulfan" will not affect human health as alleged.

From the said report, it is crystal clear that the use of "Endosulfan" will not cause any harm either to animals or to people. Copy of the report dated 29-10-2004 is herewith produced and marked as **ANNEXURE-"A"**.

7. It is submitted that during the course of the study by the said committee, the experts took the samples of cashew leaves and cashew orchard soil and the said samples were sent to the Indian Institute of Horticulture Research, Hesaragatta, Bangalore for residue analysis through laboratory tests. Information obtained under the Right to information Act from the Institute of Horticultural Research reveal that the laboratory analysis of the leaf and soil samples did not show unacceptable residue levels. From the said result, it is clear that the "Endosulfan" cannot be the cause for the alleged health disorders present in Belthangadi Taluk. Copy of the result furnished by the Indian Institute of Horticulture Research dated 27/28-1-2010 is herewith produced and marked as **ANNEXURE-"B"**. The media also carried reports regarding the expert committee report which concluded categorically that Endosulfan was not the cause for the alleged ailments and health disorders seen in Belthangady taluk. Copy of the news report dated 15-4-2005, carried in Prajavani News daily is herewith produced and marked as **ANNEXURE-"C"**.

8. From the facts narrated above and the documents mentioned above, it is clear that the "Endosulfan" cannot be a cause for the alleged health disorders seen in Belthangadi Taluk. In spite of this and ignoring the earlier expert report, one of the members of the Legislative Assembly namely, Kumari.Shobha Karandlaje, MLA from Yeshwanthpur constituency, again raised a question in the Legislative Assembly on 23-12-2009 and asked the State Government to ban use of "Endosulfan" in Karnataka. She also requested to pay compensation to the persons who allegedly became permanently disabled due to use of "Endosulfan" in

Karnataka Cashew Plantations Corporation. Copy of the question raised by Kumari.Shobha Karandlaje, MLA from Yeshwanthpur constituency dated 23-12-2009 is herewith produced and marked as **ANNEXURE-“D”**.

9. It is submitted that in response to her question, the Hon'ble Minister for Revenue answered that in Patrame, Nidle and Kokkada villages of Belthangadi Taluk about 37 persons were dead and about 200 had become permanently disabled due to use of Endosulfan by the Karnataka Cashew Development Corporation. Subsequently, the Hon'ble Minister directed the Deputy Commissioner to pay the compensation to the said disabled persons. This claim of 37 deaths and 200 permanently disabled persons allegedly from use of Endosulfan is not supported by scientific evidence. Copy of the reply given by the Hon'ble Minister for Revenue is herewith produced and marked as **ANNEXURE-“E”**.

10. It is submitted that the Deputy Commissioner, Dakshina Kannada District, in turn deputed the Assistant Commissioner, Puttur Division to identify the people, who allegedly suffered due to use of "Endosulfan". The Assistant Commissioner hurriedly conducted a survey for two days on 10-2-2010 and 11-2-2010 and listed about 387 members as victims of Endosulfan and considered them to be eligible for receiving monetary compensation from the government. The survey was conducted in three villages namely, Kokkada, Patrame and Nidle villages in the native district of the MLA Kumari.Shobha Karandlaje . The report/survey submitted by the Assistant Commissioner lacks scientific merit. The report/survey was not prepared by experts in the field of health and agricultural sciences. Admittedly, the Assistant Commissioner is an officer of Revenue Department and hence, he is not a competent person to do health survey and determine the actual cause of the health problems . Understandably, therefore, the report has such cases as mentioned below.

- Sri.Birakke Naik S/o Devappa Naik of Kokkada village, aged 84 years suffers from leg pain due to use of Endosulfan
- Sri.Ramanna Gowda S/o Thimmappagowda of Kokkada village, aged 50 years, suffers from diabetes due to use of Endosulfan .
- Smt. Seethamma W/o Ramana Gowda of Kokkada village aged 65 years suffers from Diabetes due to use of Endosulfan
- Sri. Shivashankar Hebbar, S/o Subraya Hebbar of Valanka village aged 47 has become deaf due to use of Endosulfan.
- Sri.Koragappa S/o Guruva of Kokkada village aged 60 has become dumb due to use of Endosulfan
- Sri.Veerappa, S/o Kariyayya of Kokkada village aged 70 has developed cataract due to use of Endosulfan
- Smt.Honnamma ew/o Poovani Gowda of Patrame village aged 50 suffers from heart disease due to use of Endosulfan
- Smt. Dayavathi w/o Lakshmana Gowda of Kokkada village aged 45 suffers from loss of appetite and lack of sleep due to use of Endosulfan and
- Smt.Devaki W/o Inappagowda of Patrame village, aged 65 years developed a scar on the nose due to use of Endosulfan.

These are just a few examples taken from the survey report submitted by the Assistant Commissioner, Puttur Division to show the dismal quality of the so called health survey conducted and completed in 48 hrs that identified certain

common health problems and arbitrarily attributed them to the use of Endosulfan.

From the above, one can come to a conclusion that there's total lack of application of rational mind. It is illogical, irrational and unscientific to attribute body pain, diabetes, deafness, dumb, cataract, lack of appetite and sleep etc to use of Endosulfan. It is demonstrably clear that the survey was conceived, conducted and concluded in a manner that constitutes arbitrary and unjustifiable discrimination and a strong bias & prejudice against Endosulfan. The government has breached its duty to make an objective and scientific assessment of facts. The government, for reasons that remain unexplained, chose to ignore the earlier expert committee report accepted by the previous government and rushed to a judgment that was not based on a reasoned analysis. Democracy demands that the government activities should be transparent, well reasoned, responsible and accountable. The government's action in this case lacks all these elements. The government had failed to follow due process of science and/or law. It is clear that the government wanted to give largesse to select people in one particular assembly constituency and used Endosulfan as a convenient excuse. Copies of the list of people allegedly affected by use of Endosulfan in the Kokkada, Patrame and Nidle villages of Belthangadi Taluk as prepared and submitted by the Assistant Commissioner are herewith produced and marked as **ANNEXURES-“F”, “G” & “H”**.

11. It is submitted that on the basis of the list of so called affected persons prepared in 48 hours by the Assistant Commissioner, the 6th Respondent released a sum of Rs.25 Lakhs on 27-03-2010 to rehabilitate the people allegedly affected by Endosulfan people by issuing a G.O. No. KSNP 48 KSV 2010, towards establishment of a rehabilitation centre at Kokkada under the supervision of Sri.Veerendra Heggade, of Dharmasthala. Copy of the Government Order No.'KSNP 48 KSV 2010, issued by 6th

Respondent dated 27-3-2010 is herewith produced and marked as **ANNEXURE-“J”**.

12. It is pertinent to mention that the Hon'ble Chief Minister of Karnataka on 26-2-2010 itself directed the Deputy Commissioner, Dakshina Kannada District to pay a sum of Rs.50, 000/- to the family, who were listed as affected by Assistant Commissioner, Puttur. Copy of the letter dated 26-2-2010 issued by the Hon'ble Chief Minister to the Deputy Commissioner, Dakshina Kannada District is herewith produced and marked as **ANNEXURE-“K”**.

13. It is submitted that on the basis of the report of the Assistant Commissioner, the 7th Respondent passed an order on 19-2-2010 vide G.O.No. RD 9 DSP:2010. The said Government Order says that

- the persons suffered with 75% disability are entitled to get Rs.1, 000/- per month as Pension,
- the persons suffered with more than 40% and below 75% disability are entitled to get Rs.400/- per month as pension.

The said Government Order further says that Rs.50 Lakhs has been released under the Account No:2235-02-101-0-20-100 and directed the Deputy Commissioner to disburse the said amount to the affected persons . Copy of the Government Order No RD 9 DSP 2010 dated 19-2-2010 is herewith produced and marked as **ANNEXURE-“L”**.

14. It is submitted that according to information received under Right to Information Act, the Karnataka Cashew Development Corporation Limited was using many pesticides such as Quinalphos, Carbaryl besides Endosulfan. It is not clear what made the government to allege that Endosulfan was the only pesticide used by the Karnataka Cashew Development Corporation. This shows either the government is ignorant of what

pesticides were actually used by the Karnataka Plantation Corporation or the government is simply prejudiced and biased against Endosulfan. Copy of the details of pesticides used for aerial spraying from 1989 to 2008 is herewith produced and marked as **ANNEXURE-“M” and N.**

15. It is submitted that after coming to know that the State Government was blaming the "Endosulfan" for the alleged disabilities, health disorders and diseases, the 1st petitioner got issued a legal notice to the 1st Respondent on 14-9-2010 calling upon the first respondent to take immediate steps to reconsider, review and remove the name of the product "Endosulfan" from Government Order dated 27-3-2010 within 15 days from the receipt of the notice. In spite of issuing legal notice, the State Government has neither responded till date nor has taken steps to delink Endosulfan from health disorders. Hence, having no other option preferred the present Writ Petition. Copy of the legal notice issued by the 1st petitioner dated 14-9-2010 is herewith produced and marked as **ANNEXURE-“P”.**

16. From the facts narrated above and the documents produced by the petitioner, it is crystal clear that the state government arbitrarily rushed to a conclusion that the use of Endosulfan was causing health disorders which included leg pain, scar in the nose etc. The government order failed to make a prima facie" showing that the use of Endosulfan caused leg pain, diabetes, deaf & dumb etc. The petitioner would like to draw attention to the fact when the matter was first raised by Kumari.Shobha Karandlaje, MLA from Yeshwanthpur constituency on 23-12-2009, the Chief Minister immediately said that suitable compensation would be given to the alleged victims of Endosulfan. This shows that the Chief Minister pre determined the scientific issue based on some preconceived notion and the subsequent survey hurriedly completed in 48 hours was simply an eyewash.

17. The petitioners would like to state the environmental activists in Dhakshin Kannada who are alleging that the health problems were caused by Endosulfan are working in tandem with environmental activists in Kasargod district of Kerala. The petitioner would like to place on record the fact the activists raised similar doubts against Endosulfan in Kasargod district of Kerala (adjoining Dhakshin Karnataka) the Government of India appointed two expert committess in 2003 and in 2004- one under the Chairmanship of Dr.O.P. Dubey and the other under the Chairmanship of Dr.C.D Mayee. Both the Committees categorically stated that there was no link between the health problems reported in Kasargod district and use of Endosulfan. The government of India has since accepted the report.

18. When the petitioners first read from media reports about the govt's plans to give compensations to some people allegedly affected by Endosulfan, the petitioner wrote to the Chief Minister on August 26th 2009 seeking a meeting to explain certain scientific and material facts. A reminder was sent on 23rd Jan 2010. Unfortunately, the letter and reminder fetched no response and the government went ahead with their arbitrary decision against Endosulfan. Copies of the letters sent are attached and marked as **ANNEXURE-"Q' and "R'**.

19. While the petitioners, in fact have no objection to the government giving compensation or monetary benefits to some identified people in Dhakshina Kannada suffering from some health problems, the only grievance of the petitioners is that the government can not link the alleged health problems to use of "Endosulfan". The petitioners pray that this Hon'ble Court to direct the State Government to find out the proper reasons for the health disorders allegedly present in Patrame, Kokkada and Nidle villages. The petitioners are willing to co-operate and assist the government

in all possible ways in finding out the true cause of the alleged health problems in the identified villages of Belthangady taluk of Dhakshin Kannada. In fact some representatives of the EMFWA met with both the Chief Minister and the 2nd Respondent Kumari. Shoba Karandlaje during Feb 2010 and extended this offer . But they chose to proceed with blaming Endosulfan without valid, scientific reasons and ignoring the observations/recommendations of the earlier expert committee.

20. It is worth noting here that the health disorder seen in Dhakshin Kannada region known as “Handigodu” is prevalent since 1974 much before use of Endosulfan in Karnataka Cashew Plantations. The typical symptoms include swelling in hips and knees, deformation of the limbs, difficulty in walking, dwarfness etc. The governments own records would bear testimony to this fact that “Handigodu” has been prevalent since 1974 in Dhakshin Kannada.

21. It is submitted that by linking "Endosulfan" with the alleged disability and diseases has brought considerable disrepute to the image of Endosulfan in the minds of people. The wide publicity in the media at the cost of Karnataka government’s largesse to alleged victims of Endosulfan had led to both non-pecuniary and pecuniary loss. For example M/s Zuari Industries Ltd , a regular buyer of Endosulfan had cancelled a huge order for Endosulfan after reading about Endosulfan compensation issue appeared in the media. Anxious enquiries about the alleged health effects of Endosulfan keep coming from both traders and farmers. Copies of them are attached and marked as **ANNEXURE “S”**.

22. It is important to note that the impugned action of the Government is wholly arbitrary and is an exercise with an oblique motive, if one adverts to certain facts which will throw light on these aspects. The total consumption of Endosulfan in the State of

Karnataka is about 8 lakh litres per year. The said product is used by farmers growing pulses, cotton, vegetables, Tea, Coffee etc. Out of the total consumption of Endosulfan, less than 5,000 ltrs. is consumed in the Dakshina Kannada Dist. The remaining consumption is in the other districts of the State. This is an important aspect to be considered. Although major portion of consumption of Endosulfan is in the area other than Dakshina Kannada the alleged health problems are confined to a few villages of Dakshina Kannada . The speed with which the government acted blaming Endosulfan to health problems based on survey by revenue department clearly spell out the malafides involved in the whole process. It is to be noted that the product Endosulfan is being used in other parts of the State which are major consumption of the said product for decades and there has been no reports of any disease or dis-orders linked such usage from any other parts of the State.

Despite known facts and scientific truths about Endosulfan known to the government, the government of Karnataka is continuing its questionable efforts to malign the product Endosulfan without responding to the legal notice sent to them in Sept 2010. On 17/2/2011 the Cabinet suddenly took an arbitrary decision to temporarily ban use of Endosulfan belatedly & questionably invoking Section 26 and Section 27 of the Insecticides Act 1968. in entire state of Karnataka and conveyed the decision directly to the press and media . A copy of the News Report in this regard is herewith produced and marked as **ANNEXURE - "T"**. The Petitioners have since applied under the provisions of Right to Information Act, seeking more details with respect to the alleged illegal ban /restriction announced by the government in the media. The whole motive behind this move is only to give post facto legitimacy to the Endosulfan linked payments given last year to some people in the villages of Belthangady taluk.

23. Aggrieved by the Order dated 19-2-2010 in G.O.No. RD 9 DSP: 2010, issued by the 7th Respondent, and also the Order dated 27-3-2010 in G.O. No. KSNV 48 KSV 2010, issued by 6th Respondent, the petitioner has no other alternative and efficacious remedy than to approach this Hon'ble Court under Article 226 of the Constitution of India, on the following among other grounds.

24. The petitioner has not filed any other writ petition or any other case, either before this Hon'ble Court or before any other forum, on the same cause of action.

GROUND:

The grounds in support of the Writ Petition are as under:

25. The State Government failed to take cognizance of the report of an expert committee earlier appointed in the year 2004 and whose recommendations the previous government had accepted as stated in the floor of the Legislative Assembly.

26. As stated supra, it is to be noted that the use of Endosulfan in the Dakshina Kannada is a miniscule part of the actual consumption of the same in the State of Karnataka. It is pertinent to note that the product has been used for decades by farmers. It is important to note that there are no allegations regarding any disease being caused by the use of Endosulfan in other parts of the State where the product has been used extensively by farmers. The product is a household name among the farming community. In spite of the same, only by conducting an alleged study in three villages of Dakshina Kannada district, decisions are taken to curtail the use of the product and to malign the same without any basis. The entire action is without basis and mala fide. The action of the Government is wholly unconstitutional and violative of Article 14 of the Constitution. The action is also hit by the Wednesbury principle of unreasonableness.

27. The impugned decision/order of the government of the was conceived and executed in a manner that constitutes arbitrary and unjustifiable discrimination. It is rather strange and odd for the government to hurriedly order a health survey by Revenue Department officials who do not understand anything about medical science or pesticides chemistry.

28. The government had erred in arbitrarily linking health problems to use of Endosulfan on the strength of a 48 hrs survey done by revenue departmental officials ignoring the considered opinion of expert committee appointed in the year 2004 and whose recommendations were accepted by the previous government.

29. The impugned decision to pay compensation to people allegedly affected by Endosulfan did not provide any scientific data showing evidence of harm resulting from use of Endosulfan. Approved uses of Endosulfan neither causes nor contributes to such alleged health disorders as diabetes, deafness, cataract, lack of appetite, loss of sleep, leg pain etc. It is widely known that the crippling disorder commonly known as “Handigodu” is present in Dhakshin Kannada since 1974, much before the use of Endosulfan in Karnataka Cashew plantations.

30. Under Article 51A(h) of our Constitution, the citizens of India (which include the State and judiciary) are under duty to show “scientific temper”. The term “scientific temper” refers to an attitude, which involves application of scientific logic, devoid of bias and errors. The State is to be guided by this fundamental duty enshrined in our Constitution.

31. Democracy demands that the government activities should be transparent and accountable adhering to due process. The

present decision of the government is only an attempt to illegally disperse state largesse to a favour a few at the behest of the 2nd Respondent in her home town. The entire actions are wholly illegal and smacks of malafides.

32. The government order blaming Endosulfan for a host of health problems is not rationally, objectively and scientifically supported by evidence.

33. The respondent effectively denied the petitioner the opportunity to explain scientific facts despite repeated requests including legal notice.

34. The democratic government has a legal obligation to take reasonable care to avoid harm or injury to the legitimate interests of citizens including the petitioner.

35. The government has admittedly issued the impugned order with an eye on vote bank in one particular area.

36. The government decision to link compensation to Endosulfan use is so arbitrary and unreasonable as to amount to a clear and prejudicial error of law and its rests upon gross abuse of political power.

37. The petitioners have suffered and likely to suffer both pecuniary and non pecuniary loss.

38. The Endosulfan is a effective insecticide having broad spectrum activity and provides control for long durations. The product is also cost effective as the same is produced indigenously and as it is an off patented generic molecule. The decision to ban

the use of the same will lead to great hardship to the farming community and will seriously affect their lively hood and threaten their very existence. This will lead to the farmers spending about 10 times more towards crop protection measures.

GROUND FOR INTERIM PRAYER:

39. The 1st Respondent is making hectic efforts to malign the use of Endosulfan. It is submitted that there is no basis for the action of the Government in taking steps to ban the said product or to impose any conditions with regard to the use of Endosulfan. The action is wholly arbitrary and baseless. In fact, the said action is wholly contrary to the report of the Expert Committee dated 29.10.2004 constituted by the State Government for the very same purpose of determining the effect of the use of insecticide Endosulfan. Further, it is clear that the decisions of Government are wholly motivated from the fact that the alleged area where the effects are seen only consumes about 0.625% of the entire consumption in the State of Karnataka. The product has been in use for decades in various parts of the State where about 8 lakh litres is being consumed on a yearly basis. Such illegal and unfounded action of the Government affects the entire industry and affects the fundamental right to carry on business lawfully. It also affects the livelihood of around 5000 people who are employed in the industry and their dependants. It is submitted that unless interim order sought for are granted, the Petitioners and the industry as such will be put to irreparable hardship and injury. The balance of convenience is also in favour of the Petitioners. Hence the need for interim relief.

P R A Y E R

WHEREFORE, the Petitioners most respectfully prays that this Hon'ble Court may be pleased to:

- a) Issue a writ of Certiorari or order or direction, in the nature of a Writ, quashing the Government Order dated 27-3-2010 in G.O. No.KSNP 48 'KSV 2010, issued by 6th Respondent vide Annexure-"J" and also that of the Government Order dated 19-2-2010 vide G.O.No.RD 9 DSP : 2010 issued by the 7th respondent vide Annexure-"L".
- b) Declare that the use of "Endosulfan" cannot be linked with the disability and diseases caused in Kokkada, Patrame and Nidle Villages of Belthangady Taluk and Puttur Taluk of Dakshina Kannada District and
- c) Declare that the action of the Government in linking Endosulfan to the alleged disabilities and diseases as arbitrary and un-constitutional.
- d) Direct the respondents not to make adverse publicity regarding Endosulfan.
- e) Pass any other relief/reliefs, orders, directions, writ as deemed fit for grant, in the interest of justice and equity.

Interim Prayer

Pending disposal of this writ petition, the Petitioners respectfully pray that this Hon'ble Court may be pleased to direct the respondents not to curtail the manufacture, use, sale and consumption of Endosulfan in the State of Karnataka and also restrain the Respondents from issuing any statement or publicity that use of Endosulfan is harmful to human health in the interest of justice.

Place: Bangalore.

Date: 18.2.2011

ADVOCATE FOR PETITIONER

ADDRESS FOR SERVICE:

M/S JUSTLAW
 Advocates,
 # 24, II Floor,
 Keshava Nivas,
 I Main Road, Gandhinagar,
 Bangalore-560 009.

