

**HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD**  
**WEDNESDAY, THE NINETEENTH DAY OF JANUARY TWO THOUSAND AND**  
**TWENTY TWO**

**:PRESENT:**

**THE HONOURABLE SRI JUSTICE UJJAL BHUYAN**  
**AND**

**THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI**

**IA No. 1 OF 2021**

**IN**

**WP NO: 28517 OF 2021**

**Between:**

1. DCM Shriram Limited, Having its Office at Plot No.206, H.No.8-2-293/82/A/206, Road No.14, Jubilee Hills, Hyderabad – 500 003 Represented by its Authorized Signatory and Vice President and Head (Legal), duly authorized through the Board Resolution dated: 22.04.2014 and GPA dated: 28.04.2014.
2. B.K. Khurana, S/o. Late Sh. J.K. Khurana, aged about 55 years, Authorized Signatory, C/o. M/s. DCM Shriram Limited, having its Regd.office address at 2<sup>nd</sup> Floor, World Mark-1, Aerocity, New Delhi – 110037.

...Petitioners  
(Petitioners in WP.No.28517 OF 2021  
on the file of High Court)

**AND**

1. Union of India, Rep. by its Secretary to Government Ministry of Environment, Forests and Climate Change ("MOEFCC"), Jor bagh, Lodhi Colony, New Delhi, Delhi – 110003.
2. The National Biodiversity Authority, Rep. by its Member Secretary 5<sup>th</sup> Floor, TICEL Park, CSIR Road, Taramani, Chennai – 600113.

...Respondent(s)  
(Respondents in-do-)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to stay the "upfront payment guidelines" issued by the 2<sup>nd</sup> Respondent and uploaded on the website of the 2<sup>nd</sup> respondent as ultra vires and arbitrary, pending disposal of WP.No.28517 of 2021, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and the order of the High Court dated: 01-12-2021 made herein and upon hearing the arguments of Mr. C.V MOHAN REDDY Senior Counsel representing M/s ANUP KOUSHIK KARAVADI Advocate for the Petitioners, Mr. T. SURYA KARAN REDDY (Additional Solicitor General of India) for the Respondents, the Court made the following.

**ORDER:**

**THE HON'BLE SRI JUSTICE UJJAL BHUYAN**  
**AND**  
**THE HON'BLE JUSTICE P. MADHAVI DEVI**

**I.A.No.1 of 2021**  
**IN**  
**W.P.No.28517 OF 2021**

**ORDER:**

(Per Hon'ble Sri Justice Ujjal Bhuyan)

Heard Mr.C.V.Mohan Reddy, learned senior counsel for the petitioners and Mr. T.Suryakaran Reddy, learned Additional Solicitor General of India, for the respondents on the prayer for stay.

2 It may be mentioned that by filing this petition under Article 226 of the Constitution of India, petitioners have sought for the following reliefs:

“a) declaring Section 3 (2) (c) (ii), Section 3 (1) and Section 4 of the Biological Diversity Act, 2002 as unconstitutional and void;

b) declaring the ‘upfront payment guidelines’ issued by the 2<sup>nd</sup> respondent and uploaded on the website of the 2<sup>nd</sup> respondent as arbitrary, unreasonable and ultra vires the provisions of the Biological Diversity Act, 2002, and

c) Consequently, direct the 2<sup>nd</sup> respondent to determine the terms and conditions of approval, including terms of benefit sharing (if any), only on ‘mutually agreed terms and conditions’; and on a ‘case-by-case basis’, in accordance with Sections 19, 21 (1) of the Biological Diversity Act, 2002 and Rule 20 of Biological Diversity Rules, 2004,

d) Pass such other order as the Court may deem fit in the facts and circumstances of the case.”

3 By way of the interim application, petitioners seek stay of the guidelines issued by the second respondent for upfront payment.

4 Contention of the petitioners is that the above guidelines are in contravention of Section 64 of the Biological Diversity Act, 2002 inasmuch as the previous approval of the Central Government was not obtained and the guidelines have also not been notified in the

official gazette. Further contention is that the impugned guidelines have violated Section 21 of the Biological Diversity Act, 2002 (briefly, 'the 2002 Act' hereinafter), which deals with determination of equitable benefit sharing by the National Biological Diversity Authority.

5 On 01.12.2021 we had issued notice on admission as well as on stay, whereafter the petition for stay was heard on 30.12.2021.

6 At the outset, we may advert to the guidelines for upfront payment which reads as under:

**Guidelines for upfront payment**

**Amount of Upfront Payment for Access to Biological Resources for research or bio-survey and bio-utilization leading to commercial utilization**

Purpose	1. Quantity of biological resource for one species upto 5 Kg of biomass per site;  2. Upto 500 gm or 500 ml of soil, water (microorganisms) respectively per site.			Traditional knowledge associated with bio-resource
	----- Biological resources			
	From natural habitat	From cultivated source / institution / industrial effluent and waste	Threatened species from natural habitat	
1	2	3	4	5
Nutraceutical or Agricultural	Rs.10,000 Per collection	Rs.3,000 per collection	Rs.15,000 Per collection	30% more than the normal rate
Pharmaceutical, Chemical and Diagnostic	Rs.15,000 Per collection	Rs.5,000 Per collection	Rs.20,000 Per collection	30% more than the normal rate
Cosmetics and Luxury products	Rs.20,000 Per collection	Rs.7,000 Per collection	Rs.30,000 Per collection	30% more than the normal rate
Environmental bio-remediation or waste conversion / recycling	Rs.2,000 Per collection	Rs.1,000 Per collection	Rs.4,000 Per collection	----
Other research	Rs.5,000 Per collection	Rs.2,000 Per collection	Rs.10,000 Per collection	30% more than the normal rate

1. For bioresources available in abundance, the upfront payment will be calculated @ 50% of the amount prescribed at col.no.2 & 3 for every 50 kg / site / collection. This formula will not be applicable for microorganism.

2. Quantity of biological resources will be decided by NBA on case by case basis.

**Calculation of Payment:**

- a) aggregate of each species multiplied by quantity, multiplied by number of collection & multiplied by number of sites;
- b) whenever the soil/water is being accessed the basis of assessment for this purpose shall be in terms of ml/mg, as the case may be, multiplied by number of collection & multiplied by number of sites.

Note: 1. The accrued amount will be shared as per the provisions given in the ABS Regulations, 2014.

2. Above rates may be revised from time to time.

---

7 From the above, we find that the above guidelines provide for quantum of upfront payment for access to biological resources for research or bio-survey and bio-utilization leading to commercial utilization.

8 Biological Diversity Act, 2002 (already referred to as 'the 2002 Act' hereinabove) is an Act to provide for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources, knowledge and for matters connected therewith or incidental thereto.

9 India is rich in biological diversity and associated traditional and contemporary knowledge system relating thereto. India was a party to the United Nations Convention on biological diversity signed at Rio de Janeiro on 05.06.1992 which came into force on 29.12.1993. Main objective of the convention was conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of utilization of genetic resources. But at the same time, the convention reaffirmed the sovereign rights of the individual States over their biological

resources. Accordingly, it was considered necessary to provide for conservation, sustainable utilization and equitable sharing of the benefits arising out of utilization of genetic resources and also to give effect to the said convention. Therefore, the 2002 Act has been enacted.

10 Section 2 (b) defines 'biological diversity' to mean the variability among living organisms from all sources and the ecological complexes of which they are part and includes diversity within species or between species and of eco-systems. On the other hand, 'biological resources' has been defined under Section 2 (c) to mean plants, animals and micro-organisms or parts thereof, their genetic material and by-products (excluding value added products) with actual or potential use or value, but does not include human genetic material. Section 2 (f) defines 'commercial utilization' to mean end uses of biological resources for commercial utilization such as drugs, industrial enzymes, food flavours, fragrance, cosmetics, emulsifiers, oleoresins, colours, extracts and genes used for improving crops and livestock through genetic intervention, but does not include conventional breeding or traditional practices in use in any agriculture horticulture, poultry, dairy farming, animal husbandry or bee keeping. As per Section 2 (m), 'research' has been defined to mean study or systematic investigation of any biological resource or technological application, that uses biological systems living organisms or derivatives thereof to make or modify products or processes for any use. 'Sustainable use' has been defined under Section 2 (o) to mean the use of components of biological diversity in such manner and at such rate that does not lead to the long-term

decline of the biological diversity thereby maintaining its potential to meet the needs and aspirations of present and future generations.

11 Section 3 provides that certain persons shall not undertake biodiversity related activity without approval of the National Biodiversity Authority. As per Sub-Section (2) of Section 3, the persons who shall be required to take previous approval of the National Biodiversity Authority have been mentioned therein. This is clarified in Section 19 (1), which says that any person referred to in Sub-Section (2) of Section 3 who intend to obtain any biological resource occurring in India or knowledge associated thereto for research or for commercial utilization or for bio-survey and bio-utilization or transfer the results of any such research relating to biological resources occurring in or obtained from, India, shall make application in such form and payment of such fees as may be prescribed, to the National Biodiversity Authority.

12 Section 21 provides for determination of equitable benefit sharing by National Biodiversity Authority. As per Sub-Section (1), the National Biodiversity Authority while granting such approval shall ensure that the terms and conditions of approval secures equitable sharing of benefits arising out of the use of accessed biological resources, their by-products, innovations and practices associated with their use and applications and knowledge relating thereto in accordance with mutually agreed terms and conditions between the person applying for such approval, local bodies concerned and the benefit claimers. As per Sub-Section (2), the National Biodiversity Authority shall determine the benefit sharing which shall be given effect in the manner indicated therein which

shall however be subject to any regulations made in this behalf. The benefit sharing shall include payment of monetary compensation and other non-monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit. Sub-Section (4) clarifies that for the purpose of Section 21, the National Biodiversity Authority shall, in consultation with the Central Government, by regulations, frame guidelines.

13 Section 48 says that the National Biodiversity Authority shall, in the discharge of its functions and duties under the 2002 Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

14 Section 62 empowers the Central Government to make rules for carrying out the purposes of the 2002 Act.

15 The power to make regulations is provided in Section 64. It says that the National Biodiversity Authority shall, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations for carrying out the purposes of the 2002 Act.

16 It may be mentioned that in exercise of the powers conferred by Section 62 of the 2002 Act and in supersession of the National Biodiversity Authority (Salary, Allowances and Conditions of Service of Chairperson and other Members) Rules, 2003, the Central Government has made the Biological Diversity Rules, 2004 ('2004 Rules' hereinafter).

17 According to learned senior counsel for the petitioner, from a conjoint reading of Section 21 (2), Section 21 (4) and Section 64 of



the 2002 Act, it is evident that in a matter relating to payment of monetary compensation and other benefits to the benefit claimers, the National Biodiversity Authority shall frame guidelines by way of regulations which shall be with the previous approval of the Central Government and must be notified in the Official Gazette. *Prima-facie*, the 'upfront payment guidelines' do not conform to the aforesaid requirements.

18 Learned Additional Solicitor General, on the other hand, submits that in exercise of the powers conferred by Section 64 of the 2002 Act r/w sub-Section (1) of Section 18 and sub-Section (4) of Section 21 of the said Act, the National Biological Diversity Authority has made a set of guidelines called the Guidelines on access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014 (briefly, 'the 2014 Regulations', hereinafter). Regulation 1 lays down the procedure for access to biological resources and / or associated traditional knowledge for research or bio-survey and bio-utilization for research. Sub-Section (1) refers to Form No.1 of the 2004 Rules. Regulation 2 says that on being satisfied National Biodiversity Authority shall enter into a benefit sharing agreement with the applicant which shall be deemed as grant of approval for access to biological resource for research. As per the proviso, in case of biological resources having high economic value, the agreement may contain a clause to the effect that the benefit sharing shall include an upfront payment by the applicant of such amount as agreed between the applicant and National Biodiversity Authority. As per Regulation 3 (3), in case of biological resources having high economic value such as sandalwood, red sanders etc., and their derivatives, the benefit



sharing may include an upfront payment of not less than 5% on the proceeds of the auction or sale amount, as decided by the National Biodiversity Authority or State Biodiversity Board and the successful bidder or purchaser shall pay the amount to the designated fund, before accessing the biological resource.

19 Learned Additional Solicitor General has also referred to the declaration by recipient / collaborator, which is part of the 2014 Regulations, providing for upfront payment. He, therefore, contends that the 2014 Regulations are in full compliance to the requirement of law, such as Section 64 and Section 21 (4) of the 2002 Act, and the guidelines for the upfront payment is nothing but sequel to the 2004 Regulations. He also referred to Office Memorandum dated 10.09.2018 issued by the Government of India, Ministry of Environment, Forests and Climate Change issuing directions under Section 48 of the 2002 Act to the National Biodiversity Authority for enhancing implementation of the 2002 Act. In the above background, he submits that question of staying the guidelines does not arise. Respondents would file a detailed counter affidavit, whereafter Court may adjudicate on the *vires* of the impugned provisions.

20 Mr. C.V.Mohan Reddy, learned senior counsel for the petitioners, in continuation of his initial contentions, submits that the core contention of the petitioners, as alluded to hereinabove, has remained unanswered.

21 Having heard learned counsel for the parties and after careful consideration of all relevant aspects of the matter, we are of the view that it would not be proper to stay the said guidelines for upfront

payment without a full and complete adjudication on the *vires* of the impugned provisions. That apart, the impugned guidelines have been in force since 2014. Petitioners have not disclosed how many applications they have filed and how much upfront payments they have made and how such payments have impacted them. In the absence of factual details, no *prima-facie* view can be taken about the alleged arbitrariness or irrationality of such upfront payment. Therefore, at this stage staying the impugned regulations would not be justified. Consequently, we decline the prayer for stay.

22 However, respondents are directed to file detailed counter affidavit within four weeks from today, whereafter petitioners may file reply affidavit within two weeks.

23 Hearing of the writ petition to be expedited.

24 Interlocutory application is disposed of.

SD/- K ONESIM  
Assistant Registrar

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary to Government Ministry of Environment, Forests and Climate Change ("MOEFCC"), Jor bagh, Lodhi Colony, Union of India, New Delhi - 110003.
2. The Member Secretary, National Biodiversity Authority, 5<sup>th</sup> Floor, TICEL Park, CSIR Road, Taramani, Chennai - 600113 (RR 1 and 2 by RPAD).
3. One CC to M/s. ANUP KOUSHIK KARAVADI, Advocate [OPUC].
4. One CC to Mr. T. SURYA KARAN REDDY (Additional Solicitor General of India), Advocate [OPUC].
5. Two spare copies  
ZEE

HIGH COURT

UBJ & PMDJ

DATED:19/01/2022

ORDER

I.A.NO.1 OF 2021  
IN  
WP.No.28517 of 2021

DIRECTION

