

IN THE SUPREME COURT OF INDIA

EXTRA ORDINARY ORIGINAL JURISDICTION

I A NO. OF 2006

IN

WRIT PETITION [Civil] No. 202 of 1995

In the matter of:

T.N.Godavarman ... Petitioner

Vs.

Union of India and Ors. ... Respondents

And in the matter of:

1. Conservation Action Trust,)
a Public Trust registered under)
the Bombay Public Trust Act, 1950,)
having its office at)
D – 502 Glengate, Hiranandani Gardens,))
Powai, Mumbai 400 076)

2. Debi Goenka,)
the Executive Trustee of the)
Conservation Action Trust, having)
his office at D – 502 Glengate, Hiranandani)
Gardens, Powai, Mumbai 400 076)

Applicants

Vs.

1. The Union of India, through the)
Secretary of Ministry of Environment &)
Forests, having its office at Paryavaran)
Bhawan, CGO Complex, Lodhi Road,)
New Delhi 110 007)

2. The Union of India, through the)
Secretary, Ministry of Agriculture, Dept.)
of Animal Husbandry and Dairying,)
having its office at Krishi Bhawan,)
New Delhi 110 001)

3. State of Uttar Pradesh through its)
Chief Secretary, having its office at)
Room No. 110, Lal Bahadur Shastri)
Bhavan Annexe, U.P. Sachivalay)
Lucknow 226001.)

4. State of Rajasthan through its)
 Chief Secretary having its office at)
 Government Secretariat,)
 Jaipur 302005.

5. State of Maharashtra through its)
 Chief Secretary having its office at)
 Matralaya, Mumbai 400032.) Respondents

**APPLICATION FOR SEEKING A BAN ON THE VETERINARY
 USE OF DICLOFENAC DRUG IN INDIA**

To,

**THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS
 HON'BLE COMPANION JUSTICES OF THE HON'BLE
 SUPREME COURT OF INDIA**

**THE HUMBLE APPLICATION OF THE
 APPLICANTS ABOVENAMED**

MOST RESPECTFULLY SHEWETH:

1. The 1st Applicant is a N.G.O., working in the field of conservation of forests and wildlife. The 2nd Applicant is the Executive Trustee of the 1st Applicant. The 1st Respondent is the Union of India through the Secretary, Ministry of Environment and Forest. The 2nd Respondent is the Union of India, through the Secretary, Ministry of Agriculture and Dairy. The 3rd to 5th Respondents are the State of Uttar Pradesh, the State of Rajasthan and the State of Maharashtra, having their offices at the addresses mentioned hereinabove. These states have been chosen in their representative capacity since they held a high population of vultures.

2. By the present Application, the Applicants are seeking a ban on the veterinary use of the drug Diclofenac because it is now well established, and accepted by the 1st and 2nd

Respondents, that the continuation of the veterinary use of the said drug will lead to the extinction of certain species of vultures, which are found in India.

3. The brief facts, necessitating the filing of the present Application, are as follows:-

a) Eight species of vultures are found in India, of which three, namely, the Whitebacked *Gyps bengalensis*, the Longbilled *Gyps indicus* and the Slender-billed *Gyps tenuirostris* are critically endangered.

b) Mr. Vibhu Prakash, Senior Scientist with the Bombay Natural History Society (BNHS) had conducted a study of vultures in Keoladeo National Park. The said study showed a dramatic decrease in the number of nesting pairs of White – backed vultures from 353 nests in 1987 – 88 to 150 nests in 1996-97. This number declined even further – there was a calamitous decline of the population by 90%.

c) In 1998, anecdotal reports of local disappearance of vultures circulating through out India prompted the issuing of a “Vulture Alert” by Dr. Asad Rahmani, Director of the Bombay Natural History Society (BNHS). In more than 50 responses from all of India to a questionnaire, many persons documented

the increased scarcity of Gyps vultures in areas where they had been common only a few years earlier.

d) On 6th August, 1999, Dr. Rahmani convened a Vultures Conservation Strategy Planning Meeting in Mumbai, which discussed the possible causes of the disappearance of vultures and the steps that might be taken in that regard. A review, conducted later in 1999, of the causes that had been proposed, led to the conclusion that an infectious disease, either one that had 'jumped' from another species or one that had originated by mutation from a previously benign form, could explain the pattern and magnitude of the mortality amongst vultures. Dr. A.A.Cunnigham, of the Zoological Society of London, began an active programme to look for the disease factor in collaboration with the Poultry Diagnostic and Research Centre in Pune.

e) A workshop devoted to the vulture crisis, convened by BNHS in Delhi, in September, 2000, a workshop of the 4th Eurasian Conference on Raptors, in Sevilla in September, 2001, a Round Table Discussion at the International Ornithological Congress in China in August, 2002, and the introduction to a session on the Asian Vulture Crisis at the 6th World Conference on Birds of Prey and Owls in Budapest, in May 2003 had adopted the disease hypothesis as the only plausible explanation of the vulture mortalities, in the absence of any credible alternative. All tests for pesticides and other poisons present in the food webs and for poisons applied to the carcasses to kill tigers, wolves or other predators preying on

livestock, had turned up negative. Yet, intensive efforts, to find a disease factor, by several laboratories, were all unsuccessful.

f) The first necropsies of birds that had died of the so called new “disease”, namely a bird that had died shortly after falling into water in the Keoladeo National Park in October, 1999 and a bird that was found dead in a garden in Delhi in December, 1999, reported visceral gout, i.e. the deposition of Uric Acid Crystals throughout the Visceral Cavity. Accumulation of uric acid in the Visceral Cavity is an indication of kidney failure. This Visceral Gout was found to be the characteristic of the vultures that were speedily dying. Other factors inducing kidney failure that result in the production of Visceral Gout, were given particular consideration, in the search for the causes of death of vultures.

g) A survey undertaken by Peregrine Fund Research, in Pakistan, of 74 Veterinarian and Veterinary Pharmaceutical Retailers, to identify the veterinary drugs known to cause kidney failure indicated that Diclofenac, a Non - Steroidal Anti Inflammatory Drug (NSAID), was widely used for veterinary purposes. NSAIDs came into use in human medicines in the 1970s as pain killers that also reduced fever and inflammations. Kidney damage or failure had long been recognized as a side effect, in sensitive individuals, of Diclofenac and other NSAIDs. Kidneys of 38 dead vultures were selected for analysis for Diclofenac. Out of the said 38 Vultures, 25 had died with Visceral Gout. Kidneys of the 25 Vultures that had died with

Visceral Gout contained detectable residues of Diclofenac. None of the others contained detectable Diclofenac. The possibility that this distribution would occur by chance was vanishingly small, establishing the association between the

presence of Diclofenac and the occurrence of Visceral Gout. These tests demonstrated that doses of Diclofenac prescribed for both small and large domestic animals were fatal to White – backed Vultures, and that Diclofenac was sufficiently persistent in the carcasses of treated livestock, to be ingested in lethal quantities by vultures.

h) In India also Diclofenac is a very widely used veterinary medicine for the treatment of lameness, for relieving symptoms of ephemeral fever, (a viral disease affecting the cattle), for all inflammatory conditions and fevers as well as for general purposes, when an illness is not diagnosed. Vultures, who feed on the carcasses of animals treated with Diclofenac, die as a result of the same. Published research indicates that vultures are highly susceptible to Diclofenac and are killed by kidney failure within a short time of feeding on carcasses of animals treated with a normal veterinary dose of Diclofenac. The Applicants crave to refer to and rely upon the said published research.

i) An International South Asian Vulture Recovery Plan Workshop was held on 12th to 14th February 2004 at Pinjore, Haryana. The Executive Summary of the Main Recommendation of the said Workshop noted that the said three species of Gyps Vultures were in grave danger of global

extinction. It was also noted that the said population of the three species of Gyps Vultures had declined by more than 97 %, over a 12 year period, in India, and 92 %, in a 3 year period, in Pakistan. Further, the annual rate of decline had

increased and exceeded 50 % a year. Due to this decline, all the said three species of Vultures were listed by the IUCN – World Conservative Union in 2000 as Critically Endangered, which is the highest category of endangerment. It was also noted that complete extinction was likely to occur if no action was taken. The said Executive Summary also noted that published research indicated that Diclofenac was the major cause of the observed rapid decline in population in the said Gyps Vultures. It was also noted that the exposure to Diclofenac occurs through its use to treat symptoms of diseases in domestic livestock, and that experiments showed that captive vultures were highly susceptible to Diclofenac and were killed by kidney failure, within a short time of feeding on the carcasses of animals treated with the normal veterinary dose. Further, the said Executive Summary noted that statistical models showed that vultures decline at the observed rates could be caused by contamination of less than 1 % of livestock carcasses, with levels of Diclofenac lethal to vultures. Further, it was also noted that the proportion of adult vultures which died with symptoms of Diclofenac poisoning is consistent with that expected if Diclofenac is the sole cause of the recent rapid population decline in vultures. The said Executive Summary stated that there was a need to take urgent action to avert imminent threat of global extinction of the three species of Gyps Vultures. The said Workshop recommended an outright ban on

the use of Diclofenac. The said Workshop further recommended that most expedient procedures should be used, appropriate to local circumstances, to achieve the said objective within a period of three years. Legislation or implementation

and enforcement of regulations to ban all use of Diclofenac that pose a risk to vultures, was strongly recommended. Hereto annexed and marked **Exhibit "1"** is a copy of the said Executive Summary of the Main Recommendations of the International South Asian Vulture Recovery Plan Workshop held at Pinjore, Haryana, on 12th to 14th February 2004.

j) By a letter dated 29th September, 2004 addressed to BNHS, the 1st Respondent stated that, in view of the decision taken during the Workshop held in Delhi, in April, 2004, the 1st Respondent had suggested to the State Government and the 2nd Respondent that veterinary use of Diclofenac should be phased out. Hereto annexed and marked **Exhibit "2"** is a copy of the said letter dated 29th September 2004.

k) Thereafter, by a letter dated 30th September 2004, addressed to the 2nd Respondent, the BNHS appealed to the 2nd Respondent to ban veterinary use of Diclofenac. In the said letter, BNHS stated that it has been conclusively proved that Diclofenac was the main reason for the massive death of vultures. With the said letter, BNHS forwarded to the 2nd Respondent publications in that regard. It was also pointed that BNHS had collected nearly 800 samples of cattle carcasses from Rajasthan, Haryana, Punjab, Gujarat and Maharashtra and had found a very high percentage of Diclofenac in these

collected samples. Further, BNHS pointed out that at the Summit Meeting held in Nepal, and the aforesaid Workshop held at Pinjore, Haryana, where National and International experts had participated, it was recommended to phase out

Diclofenac. Hereto annexed and marked **Exhibit "3"** is a copy of the said letter dated 30th September 2004.

l) Thereafter, on 17th March 2005, the Second Meeting of the National Board for Wildlife was held at No. 7, Race Course Road, New Delhi. The said meeting was chaired by the Hon'ble Prime Minister of India. The said meeting was also attended by officials of the 1st Respondent and other invitees. At the said meeting, it was decided that the 1st Respondent would explore the possibility of banning Diclofenac, in consultation with the 2nd Respondent, so that the drug is phased out within six months. Therefore, at the said meeting it was finally decided that the veterinary use of Diclofenac would be phased out within six months. Hereto annexed and marked **Exhibit "4"** is a copy of the Summary Record of the said Meeting held on 17th March, 2005.

m) Thereafter, the 1st Respondent addressed a letter dated 13th April, 2005. In the said letter, it was stated that the population of the said three species of Gyps Vultures had drastically gone down and continued to be on the decline. It was further stated that research work carried out to find out the reasons for this large scale mortality of vultures had indicated that Diclofenac, which reached into the bodies of the vultures through the carcasses of the domestic cattle, was the main

culprit. Further, it was stated that, at the said Meeting held on 17th March 2005, the proposal to phase out Diclofenac and replace it with some alternative drug received general approval. Finally, the said letter stated that it was proposed to have a

brainstorming session, on 20th April, 2005, in the Ministry of Environment and Forests to chalk out a plan for phasing out Diclofenac and replacing it with some appropriate drug. Hereto annexed and marked **Exhibit "5"** is a copy of the said letter dated 13th April, 2005.

n) Thereafter, a meeting was held on 20th April, 2005 at Paryavaran Bhavan, New Delhi. The said meeting was attended by the officials of the 1st Respondent, officials of the Ministry of Health, officials of the Wild Life Institute of India and members of the BNHS. The said meeting was chaired by Dr. Prodipto Ghosh, Secretary, Ministry of Environment and Forests. At the said meeting, there was a general agreement that Diclofenac had played a key role in the sharp decline of vulture population and that Diclofenac would have to be phased out inter alia from the veterinary sector. Hereto annexed and marked **Exhibit "6"** is a copy of the Summary Record of the discussions held at the said Meeting held on 20th April, 2005.

o) The Applicants state that it very clear that, at the aforesaid Meetings held on 17th March 2005 and 20th April, 2005, the 1st Respondent had agreed to ban the veterinary use of Diclofenac.

p) By a letter dated 28th July, 2005 addressed to People Combined, a NGO, the Deputy Director, Veterinary Services, of Umaria District, in MP, informed that his office had instructed that veterinary assistant, surgeons/ veterinary extension officers should stop the use and prescription of Diclofenac with

immediate effect and should return the balance stock of the said drug. Further, in the said letter, it was also stated that all the Veterinary Hospitals and Key Village Units of the District had since then deposited most of their balance stock of Diclofenac with the office of the Deputy Director. Further, it was also stated that Diclofenac, which was fatal to Vultures, would not be purchased or received or used in future by the Department of Veterinary Services of Umaria District. Hereto annexed and marked **Exhibit “ 7”** is a copy of the said letter dated 28th July, 2005.

q) Despite all the aforesaid, the veterinary use of Diclofenac was not banned by the 1st and 2nd Respondents. Therefore, the BNHS addressed a letter dated 7th December, 2005 to the 2nd Respondent. By the said letter, it was pointed out by BNHS that, at the said Meeting held on 17th March 2005, of the National Board for Wildlife, it had been decided to phase out Diclofenac within six months. However, the said time frame had long gone. Further, BNHS pointed out that the delay was being caused by the 2nd Respondent. Finally, by the said letter, BNHS called upon the 2nd Respondent to inform it as to what action had been taken by the 2nd Respondent in the matter. Hereto annexed and marked **Exhibit “8”** is a copy of the said letter dated 7th December, 2005.

r) In reply to the said letter dated 7th December, 2005, the 2nd Respondent addressed a letter dated 12th December, 2005 to BNHS. By the said letter, the 2nd Respondent stated that studies relating to the effect of alternative drugs had been

delayed on account of some problems with certain State Governments and hoped that the studies would be completed soon. By the said letter, the 2nd Respondent stated that as suggested by the 1st Respondent, the 2nd Respondent had advised State Veterinary Departments to stop procuring Diclofenac. Finally, by the said letter, it was stated that the final decision in the matter would be taken very soon. Hereto annexed and marked **Exhibit "9"** is a copy of the said letter dated 12th December 2005.

s) The Applicants state that, despite the aforesaid, the 1st and 2nd Respondents have still not banned the veterinary use of Diclofenac.

t) By a Notification dated 22nd December, 2005, the Government of Sikkim has completely banned the use of Diclofenac through out the State of Sikkim. Hereto annexed and marked **Exhibit "10"** is a copy of the said Notification dated 22nd December, 2005.

u) Despite the Government of Sikkim banning the use of Diclofenac, the 1st and 2nd Respondents have still not banned the veterinary use of Diclofenac in India.

4. As stated hereinabove, there has been a sharp decline in the said three species of Gyps Vultures in India. The said decline has been so sharp that there is a fear that, within a very short time, the said three species of Gyps Vultures will become extinct in the world. It is for this reason that the said three

species have been listed by the IUCN – World Conservative Union, in 2000, as Critically Endangered, which is the highest category of Endangerment. Published Research has conclusively established that the said sharp decline in the population of vultures is due to the death of vultures caused by the drug Vultures feeding on the carcasses of animals which have been treated by the drug Diclofenac. Published Research has also established that the said vultures are highly susceptible to Diclofenac and are killed by kidney failure within a short time of feeding on the carcasses of animals treated by Diclofenac. The aforesaid has been accepted by the 1st and 2nd Respondents .It is for this reason that, at the said Meeting of the National Wildlife Board, held on 17th March 2005, it was decided to phase out Diclofenac within a period of six months. The same was confirmed at the said meeting held on 20th April, 2005. Despite the same, the 1st and 2nd Respondents have not banned the veterinary use of Diclofenac in India.

5. The Applicants submit that, if the veterinary use of Diclofenac is not banned in India urgently, then, within a very short period of time, the said three species of Gyps Vultures would become extinct. This will have serious implications, not only for the said three species of Gyps Vultures, but also other wildlife, human health and the ecological balance. In India, the

vulture decline has already led to an obvious increase in the number of putrefying animal carcasses. This is particularly so around human habitation, which formerly held a particularly high number of vultures, due to the disposal of livestock carcasses by dumping out doors, rather than by burial or incineration. In

certain areas in India, vultures appear to have been replaced by packs of feral dogs as the main scavengers of carcasses. This increase in putrefying carcasses and changes in scavenger populations have associated disease risks for wildlife, livestock and humans. Carcasses will have to be removed, incinerated or buried to limit the spread of livestock borne diseases such as anthrax. Increase in feral dogs in India may pose an increase in rabies. India already has half of the annual 60,000 human cases of rabies reported globally by the World Health Organisation, a great majority resulting from bites by dogs. The loss of vultures also has serious cultural and religious implications. The ancient Zoroastrian Religion, which holds earth, fire and water sacred, avoids contaminating them by disposing of their dead by placing them in what are called "Towers of Silence", where vultures used to rapidly strip the bones of flesh. Vulture numbers are now so low that human corpses are no longer being adequately disposed of by this method, thereby causing serious religious problems for the Zoroastrians.

6. The applicants submit that the wild population of the three species of vultures are now at such critically low levels that there is a possibility that there is no viable breeding population of these vultures.

7. In the aforesaid circumstances, the Applicants submit that they may be allowed to intervene in Writ Petition (Civil) No. 202 of 1995. Further, the Applicants submit that, for all the reasons stated hereinabove, this Hon'ble Court be pleased to

order and direct the 1st and 2nd Respondents to this Application to ban the veterinary use of Diclofenac in India. The applicants submit that, as stated hereinabove, if veterinary use of Diclofenac is not banned urgently in India, then, not only will the said three species of Gyps Vultures become extinct, but the same will have more serious implications on human health, wildlife and on the ecological balance, apart from religious problems for a certain community. Therefore, the Applicants submit that this Hon'ble Court be pleased to grant to the Applicants all the reliefs sought by the Applicants in the present I A. The Applicants submit that the balance of convenience is overwhelmingly in favour of the Applicants and against the Respondents.

Prayers

The Applicants, therefore, pray:

- a) that this Hon'ble Court be pleased to allow the Applicants to intervene in Writ Petition (Civil) No. 202 of 1995;

- b) that this Hon'ble Court be pleased to order and direct the 1st and 2nd Respondents to this Application to urgently ban the veterinary use of Diclofenac in India.

c) that this Hon'ble Court be pleased to direct the 1st and 2nd Respondents to this Application to make the use of Diclofenac for veterinary purposes an offence under the Environment (Protection) Act, 1986.

d) that this Hon'ble Court be pleased to direct the 1st and 2nd Respondents to this Application to take all steps possible to withdraw the existing veterinary stocks of Diclofenac from the veterinarians, pharmaceutical companies, etc.

e) that this Hon'ble Court be pleased to direct the 1st and 2nd Respondents to this Application to create and fund additional vulture holding and breeding facilities with the help of NGOs such as the BNHS in at least 10 states,

f) that this Hon'ble Court be pleased to direct the 1st and 2nd Respondents to this Application to carry out regular census and monitoring of vulture populations in the wild,

g) that this Hon'ble Court be pleased to direct the 1st and 2nd Respondents to this Application to fund and create sites that can be used to feed vultures with meat from livestock that is free from diclofenac,

h) for such further and other reliefs as the nature and circumstances of this case may require or this Hon'ble Court may deem fit.

AND FOR THIS ACT OF KINDNESS
THE PETITIONERS AS IN DUTY
BOUND AND SHALL EVER PRAY.