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IN THE SUPREME COURT OF INDIA

(CIVIL ORIGINAL JURISDICTION)

Writ Petition (Civil) No. of 2014

Public Interest Litigation

In the matter of:

1) Common Cause (A registered society)

Through Its Director,

5, Institutional Area,

Nelson Mandela Road,

Vasant Kunj, New Delhi-110070

..... The Petitioner

VERSUS

1) Union of India

Through Its Secretary,

Ministry of Environment and Forests,

Paryavaran Bhawan, CGO Complex,

Lodhi Road, New Delhi 110003

..... Respondent No. 1

2) Union of India

Through Its Secretary,

Department of Commerce,

Udyog Bhavan, New Delhi 1101011

..... Respondent No. 2

3) State of Andhra Pradesh

Through Its Resident Commissioner

1, Ashoka Road, New Delhi 110001

..... Respondent No. 3

A Writ Petition in public interest under Article 32 of the Constitution of India, for enforcements of rights under Articles 14 and 21 of the Constitution of India, seeking the quashing of the decision of the Government to export over 8,000 metric tonnes of Red Sanders wood, an endangered and precious species protected under international and domestic laws, in the form of raw logs, and seeking a direction for strict enforcement of the prohibition on export of Red Sanders wood.

To,

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

The Humble Petition of the Petitioner above-named

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner is filing the instant Writ Petition in public interest under Article 32 of the Constitution of India, for enforcements of rights under Articles 14 and 21 of the Constitution of India, seeking the quashing of the decision of the Government to export over 8,000 metric tonnes of Red Sanders wood, an endangered and precious species, protected under International and Domestic Law in raw logs form, and seeking a direction for strict enforcement of the prohibition on export of the Red Sanders with a view to protecting India's endangered biodiversity, which is critical to the citizens' quality of life.

The petitioner, Common Cause, is a registered society (No. S/11017). It was founded in 1980 by the late Shri H. D. Shourie for the purpose of securing the resolution of the common problems of the people. The

petitioner society is a public interest organisation which has been in the vanguard of the campaign for probity in public life and integrity of institutions. Over the years, it has earned a reputation and credibility for its initiatives in public interest litigation. A copy of the profile of the members of the governing council of the petitioner society is annexed as **Annexure P1** (Pg _____). Mr. Kamal Kant Jaswal, Director of Common Cause, is authorized to file this petition. The requisite Certificate & Authority Letter are filed along with the vakalatnama.

The petitioner society has not made any representation to the authorities owing to the urgency of the issue.

Case in brief

2. Red Sanders wood is commonly known as Red Sandalwood, *Rakta Chandan*, or *Lal Chandan*, and is derived from *Pterocarpus santalinus*, or *Santalum rubrum*. Apart from its use in making luxury handicraft items and luxury furniture, *Rakta Chandan* is used in making traditional Ayurvedic medicines. It is an excellent cardio-tonic as it helps in reducing LDL Cholesterol and Triglycerides that are responsible for heart ailments. It is a very powerful anti-oxidant and a potent ingredient for anti-Cancer medicines. It is also used for making herbal cosmetics and natural dyes. The Council of Scientific and Industrial Research (C.S.I.R.) Ministry of Science and Technology, Government of India, has published a research review on it describing it as “a wonder medicinal plant for next generation”. According to Hindu religious scriptures, *Rakta Chandan* is considered very dear to Hindu Gods and Goddesses. It is believed that *Rakta Chandan* increases physical

strength and prosperity and protects from evil. It is used for making temple structures, rosary beads, *havan samagri*, *dhoop* and *agarbattis*. It is also used for making *kumkum* for application of *tilak*.

3. The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. In 1995, Red Sanders was included in Appendix-II of CITES, which lists species of plants and animals likely to be threatened with extinction unless trade in them is closely controlled. In 1997, it was classified as 'endangered' in the International Union for Conservation of Nature (IUCN) Red List.

4. This Hon'ble Court in its judgment dated 13.02.2012 passed in applications filed in *T N Godavarman Thirumulpad vs Union of India & Ors (2012) 4 SCC 362* stated: "... Therefore both in CITES and in the IUCN Red List of threatened species red sandalwood is described as 'threatened with extinction', 'endangered'... Red sandalwood is a species of *Pterocarpus* native of India seen no where in the world. It is reported that the same is found only in South India... is an endemic and endangered species. Under the above mentioned circumstances, following the ecocentric principle, we are inclined to give a direction to the Central Government to take appropriate steps under Section 61 of the (Wildlife Protection) Act to include Red Sanders in Schedule-VI of the Act as requested by the State of A.P. within a period of six months from the date of this judgment. We are giving this direction, since it is reported that nowhere in the world, this species is seen, except in India

and we owe an obligation to world to safeguard this endangered species for posterity.”

5. Export of Red Sanders wood outside India stood completely prohibited in all forms. However, the Central Government allowed its export in ‘Value-added Product’ form vide Public Notice No. 378 dated 1.10.1996. Its export in the raw ‘Log Form’ remained prohibited and remains prohibited even now. A copy of the current Export Policy of India with regard to Red Sanders wood is annexed as **Annexure P2** (Pg _____).

6. The Government of Andhra Pradesh invited tenders for export of Red Sanders wood in Log form in 2006 in spite of the fact that its export in log form outside India was prohibited. This tender was challenged in Madras High Court in 2007 [*S. Kothandapani Vs. Union of India & Ors.* (W.P. No. 29273 of 2007)] wherein the Directorate General of Foreign Trade (DGFT) submitted an affidavit stating that Government of India had only granted a one-time exemption to the Government of Andhra Pradesh (A.P.) for export of Red Sanders wood in log form vide Public Notice dated 5.6.2007 and that by this very public notice, the Central Government had asked the State Government not to call for any such tender for export of Red Sanders wood in log form in the future. This exemption was granted against the prohibition mentioned in the Export Policy. Copies of the Public Notice dated 05.06.2007 issued by DGFT is annexed as **Annexure P3** (Pg _____). This assurance was recorded by the Hon’ble High Court of Madras while disposing of the

aforesaid Writ Petition vide its order dated 07.09.2007. The said order is annexed as **Annexure P4** (Pg _____).

7. That in spite of the aforesaid Public Notice dated 5.6.2007, the Government of Andhra Pradesh made yet another attempt to export Red Sanders wood in Log form in 2008 when it once again invited global tender for export of Red Sanders wood in log form and requested Government of India to approve it on *ex post facto* basis after acceptance of tender bids. However, the Government of India rejected this request vide its letter dated 14.7.2009 on the ground that Red Sanders wood was prohibited for export in Log form outside India. A copy of the said letter dated 14.7.2009 is annexed as **Annexure P5** (Pg _____). The Government of A.P. thereafter re-allotted this tender for export of Red Sanders wood in Value-added product Form.

8. There has been a phenomenal increase in illegal felling and smuggling of Red Sanders wood in the last decade. Thousands of tonnes of Red Sanders wood were illegally felled and smuggled to traders located in Hong Kong, Singapore and China. In April 2008, CITES asked the signatory parties to comply with the recommendations of the 17th Plants Committee meeting of CITES according to which India was required to conduct a Non-detrimental Findings (NDF) Study on Red Sanders wood in order to continue exporting Value-added products made from Red Sanders wood. India failed to conduct this Study due to an “inadvertent lapse” on the part of the Ministry of Environment & Forests (MoEF). The beneficiaries of this “lapse” were the vested interests which wanted India to desist from exporting Value-

added Red Sanders wood products. As a result, CITES suspended the international trade in Red Sanders wood from India in March 2010.

9. India conducted the NDF Study on Red Sanders wood in 2011 and submitted its Quantitative Field Data, Growing Stock and Natural Regeneration Status to CITES vide letter dated 20.4.2012 and requested CITES to withdraw the order for suspension of international trade in Red Sanders wood. A copy of the aforesaid letter dated 20.4.2012 is annexed as **Annexure P6** (Pg _____).

10. If Red Sanders wood is permitted for export in Log Form, there is a real danger of a sharp increase in the illegal felling of its standing trees and the smuggling of Red Sanders wood outside India. In this regard, it is pertinent to mention the observation of the Hon'ble High Court of Andhra Pradesh in *Dr. P. Shanker Rao Vs. N. Kiran Kumar Reddy and Others [PIL No. 124 of 2012]*, "3. By further proceedings on 18.6.2012, this Court was informed of the policy decision taken by the Government of India, Ministry of Environment & Forests, that if the seized stock of the red sanders is permitted to be exported in the round log form there would be likelihood of smuggling and therefore, it was decided to dispose it of in the value added form itself...".

11. That MoEF in its letter dated 20.4.2012 to CITES recommended disposal of the entire stock of 11806 MTs of Red Sanders wood confiscated/seized up to 31.1.2012 (8498 MTs available with Govt. of A.P. and 3308 MTs available with other States) in the international market without necessary application of mind and without undertaking a

sector-wise detailed study to determine the present and future demand of Red Sanders wood within India.

It is pertinent to mention here that Government of A.P. is under a Constitutional obligation to first make this material available for the indigenous use of the people of India and then consider exporting it outside India. The Government of A.P. has miserably failed in stopping the illegal felling of Red Sanders wood in its forests. It is the Constitutional duty of the State to protect Red Sanders wood trees in the forests. If the confiscated/seized Red Sanders wood is used judiciously for meeting the indigenous demand of the present and future generations, the pressure on the standing stock of Red Sanders wood would considerably be alleviated.

12. That CITES granted a one-time exemption to India to export 11806 MTs of confiscated/seized Red Sanders wood in any Form vide its Notification No. 2012/48 dated 19.7.2012 keeping in view the aforesaid letter dated 20.4.2012 written by the MoEF. The petitioner society submits that this notification implied that even though India is free to decide the form in which this precious material can be exported outside India, it is under an obligation to keep in view the endangered status of Red Sanders wood, the imperative of protection of the standing stock in forests, its growing demand within India and the extant prohibition for its export outside India in Log form. This notification, it is submitted, also implied that India was free to decide the quantity to be exported outside India every year out of the total quantity of 11806 MTs keeping in view the scientifically established fact that

Red Sanders wood does not decay even when stored for several decades.

13. On 25.02.2012, the Government of Andhra Pradesh sought permission from the Government of India to export 2000 MTs of Red Sanders wood in log form every year. The letter states: *“It is estimated that the international requirement of Red Sanders wood is approximately 2000 MTs in log form annually. If permission is granted by the Government of India to sell approximately 2000 MTs in log form annually the smuggling is likely to come down drastically as there will be no incentive left for the smugglers in view of legally available material in the market.”* A copy of the said letter dated 25.02.2012 is annexed as **Annexure P7** (Pg _____).

14. A mere 9 months after its request of February 2012 wherein it had requested the Central Government to accord permission to export 2000 MTs of Red Sanders wood every year, the Government of A.P. requested the Central Government in November 2012 to permit it to export a quantity of 8498 MTs. A copy of the letter dated 30.11.2012 sent by the Government of A.P. is annexed as **Annexure P8** (Pg _____).

15. The MoEF gave its ‘No Objection’ for the export of 3000 MTs of Red Sanders wood vide its letter dated 14.06.2013 to the Ministry of Commerce, Government of India, instead of the 2000 MTs requested by the Government of A.P. in its letter dated 25.2.2012. This ‘No Objection’ was given for export in log form instead of Value Added

Product Form despite the fact that export of Red Sanders wood in Log Form is prohibited as per the Export-Import policy of India. A copy of the aforesaid letter dated 14.06.2013 is annexed as **Annexure P9** (Pg _____). The Government of India did not even undertake a detailed sector-wise study involving industrial users in India in order to quantify the domestic demand of Red Sanders wood.

16. The Ministry of Commerce and its Directorate General of Foreign Trade (DGFT) wing permitted the Government. of A.P. to export a staggering quantity of 10582.728 MTs of confiscated/seized Red Sanders wood vide notifications dated 24.10.2013 and 3.12.2013 (8584.1363 MTs in Log Form & 1998.5917 MTs in Value Added Form). Copies of the notifications dated 24.10.2013 and 03.12.2013 are annexed as **Annexures P10** (Pg _____) and **P11** (Pg _____), respectively.

17. This permission was objected to by the MoEF on the ground that it was in violation of the ceiling of 3000 MT for export of seized Red Sanders wood in log form imposed by the MoEF. The Union Environment Minister in his letter to the Union Commerce Minister dated 05.05.2014 wrote that *“release of a huge quantity would, in addition to sending a negative signal to the growing domestic requirements, also create pressure on the young standing crop in the form of illegal felling.”* A copy of the said letter dated 05.05.2014 is annexed as **Annexure P12** (Pg _____).

18. That according to the notification dated 24.10.2013, the Government of A.P. was required to auction and allocate quantities to be exported within 6 months of the notification and execute the entire export within 6 months thereafter. However, they were not able to do this. The Government of A.P. has now issued a tender notification dated 8.8.2014 for sale of Red Sanders wood for export in log form outside India. A copy of the same is annexed as **Annexure P13** (Pg _____). The Government of A.P. has therefore requested the Government of India to allow export of Red Sanders wood in Log form in two phases vide its letter dated 27.08.2014 to MoEF and to extend the validity of Public Notice dated 24.10.2013 by another 6 months. The reason cited by the Government of A.P. in this regard is that it could not auction and export the material on account of model code of conduct during elections and due to bifurcation of the State. A copy of the letter dated 27.08.2014 sent by the Chief Minister of A.P. is annexed as **Annexure P14** (Pg _____).

19. It is pertinent to mention here to invite attention to the letter dated 27.8.2014 written by Institute of Wood Science and Technology, Bangalore to the Indian Council of Forestry Research and Education, an autonomous body of the MoEF. This letter has addressed several crucial issues with regard to Export of Red Sanders wood in Log form which have been raised in the present petition. It has called for a reconsideration of the decision to export Red Sanders in bulk quantities. A copy of the said letter is annexed as **Annexure P15** (Pg _____).

20. That the Government of India has extended the Notification dated 24.10.2013 by another 6 months vide its Notification dated 5.11.2014. While the Government of India has issued this Notification subject to the condition that it “*shall be subject to such orders, as passed by the Hon’ble High Court of Madras or such submissions as made before the Hon’ble High Court of Madras in WP No. 29273 of 2007 or such orders as passed by any other court, if any*”, it has done so ignoring the letter dated 5.5.2014 written by then Minister of Environment & Forests to the then Minister of Commerce. It is pertinent to mention here that issuance of the aforesaid Public Notice is in direct conflict with what has been stated in this letter. A copy of the notification issued by the Ministry of Commerce dated 05.11.2014 is annexed as **Annexure P16** (Pg _____).

21. The Government of A.P., instead of abandoning its plan to export Red Sanders wood in Log form keeping in view the spirit of the aforesaid condition imposed by DGFT has issued a revised tender notice dated 7.11.2014 to hold an e-auction for the sale of 4160 MTs of Red Sanders wood between 24.11.2014 and 1.12.2014 for export in Log Form outside India. The Government of A.P. has apparently relied upon an untenable legal opinion no. 67/2014 dated 7.11.2014 given by the Advocate General of Andhra Pradesh wherein he has suggested that since WP No. 29273 of 2007 has been dismissed by the Madras High Court, the submission made to the Hon’ble Court by DGFT is of no consequence. It is pertinent to mention here that this writ petition was dismissed by the High Court only on the basis of the submission made by DGFT and therefore, this submission holds its ground unless

a reprieve is granted by the Madras High Court in this regard. The Advocate General in his legal opinion has further opined that the Government of India ought not to have talked about this writ petition which has already been dismissed and that it has perhaps been done inadvertently. He has advised the Government of A.P. to request the Central Government to delete the aforesaid condition from the notification. He has further advised the Government of A.P. to go ahead with the auction as per the date specified in the aforesaid tender notification dated 7.11.2014. The Government of A.P. is now going ahead with this tender on this basis. A copy of the legal opinion given by the Advocate General dated 07.11.2014 is annexed as **Annexure P17** (Pg _____). A copy of the revised tender notice dated 07.11.2014 is annexed as **Annexure P18** (Pg _____).

22. The petitioner society submits that the above tender notification be quashed and that the State/Central agencies including the Government of A.P. may be permitted to sell Red Sanders wood only to the *bona fide* industrial users having manufacturing units within India to make Value-added Products. Such sale to *bona fide* users can also be done through the State Trading Corporation of India. The export of confiscated/seized Red Sanders wood may henceforth be prohibited or at the very minimum be allowed only in the form of finished products and not in log form.

23. The above tender notification also ought to be quashed since it would be detrimental to the objective of conservation of this endangered species, which is protected under both international and

national legislations. The export of such huge quantities of Red Sanders in log form would create enormous pressure on standing forest stocks which would be in violation of Article 21 of the Constitution. The same would also be contrary to the Biological Diversity Act 2002, which mandates the Government to take every step for the protection of biodiversity and endangered species.

24. The petitioner society has not filed any other writ, complaint, suit or claim in any manner regarding the matter of dispute. The petitioner society has no other effective remedy available.

Grounds

That the decision of the Central Government and the Government of Andhra Pradesh to export huge quantities of Red Sanders in log form is in violation of Article 21 of the Constitution since the same would jeopardize our ability to preserve this endangered species that has significant use for the people of India. Article 21 includes the right of the people to live in a clean and healthy environment where biological diversity is protected.

That the decision of the Respondents to export huge quantities of Red Sanders in log form is in violation of India's commitment under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) which is an international agreement to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Red Sanders wood was included in Appendix-II of CITES in 1995, which lists species of plants and animals

that may become threatened with extinction unless trade is closely controlled. In 1997, it was classified as 'endangered' in the International Union for Conservation of Nature (IUCN) Red List.

That the decision of the Respondents to export huge quantities of Red Sanders in log form is in violation of India's commitment under the Convention on Biological Diversity 1992 pursuant to which the Parliament enacted Biological Diversity Act 2002. The same put the onus on the Central Government and all authorities to take steps for the protection of the endangered species and biodiversity.

That the actions and decisions of the respondents are completely arbitrary and unreasonable, not being based on a study of the environmental and economic impact of such a decision, and betray a lack of application of mind, and hence are in violation of Article 14 of the Constitution of India. The export of Red Sanders in the log form is also contrary to the export-import policy of the Central Government.

That this Hon'ble Court in its judgment dated 13.02.2012 passed in applications filed in T N Godavarman Thirumulpad vs Union of India & Ors (2012) 4 SCC 362 had stated: "... Therefore both in CITES and in the IUCN Red List of threatened species red sandalwood is described as 'threatened with extinction', 'endangered'... Red sandalwood is a species of Pterocarpus native of India seen no where in the world. It is reported that the same is found only in South India... is an endemic and endangered species. Under the above mentioned circumstances, following the ecocentric principle, we are inclined to give a direction to

the Central Government to take appropriate steps under Section 61 of the (Wildlife Protection) Act to include Red Sanders in Schedule-VI of the Act as requested by the State of A.P. within a period of six months from the date of this judgment. We are giving this direction, since it is reported that nowhere in the world, this species is seen, except in India and we owe an obligation to world, to safeguard this endangered species, for posterity.”

PRAYERS

In view of the above, the petitioner society most respectfully prays in public interest before this Hon'ble Court to:

1. Issue appropriate writ directing the respondents not to permit any export of Red Sanders wood in any form, OR, in the alternative, to permit the export of Red Sanders wood only in the form of Value-Added Finished Products.
2. Issue appropriate writ quashing the decision of the respondents to export Red Sanders wood in log form and quashing the notification issued by the Government of India dated 05.11.2014 (Annexure P16) and the tender notice issued by the State of Andhra Pradesh on 07.11.2014 (Annexure P18) and other similar notices/notifications to export Red Sanders wood in log form.
3. Pass any other order deemed fit in the facts and circumstances of this case.

Petitioner

Through

(PRASHANT BHUSHAN)
Advocate for the Petitioner

Drawn by: Pranav Sachdeva
Drawn and Filed on: 17.11.2014
New Delhi