

**IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA  
AT CHANDIGARH**

C.W.P. No 4750 of 2013  
PUBLIC INTEREST LITIGATION

Hemant Goswami S/o B. M. Goswami R/o House No. 1726, Sector 33-D,  
Chandigarh 160 020

**.....Petitioner**

Versus

- (1) Union of India through Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, Maulana Azad Road, New Delhi - 110 001
- (2) State of Haryana through Chief Secretary, Haryana Civil Secretariat, Sector 1, Chandigarh
- (3) State of Punjab through Chief Secretary, Punjab Civil Secretariat, Sector 1, Chandigarh
- (4) Chandigarh Administration through Administrator, UT Secretariat, Sector 9, Chandigarh – 160 009

**..... Respondents**

Chandigarh  
27.02.2013

Hemant Goswami  
Petitioner-in-person

And also through

A.P.S. Shergill Advocate P-810/1993	Harish Mehla Advocate P-2901/2009
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**CIVIL WRIT PETITION** under Articles 226/227 of Constitution of India for issuance of suitable orders/ directions/ instruction and/or a Writ in the nature of mandamus directing the respondents to prohibit and restrict the use of Group 1, 2A and 2B (known, probable and possible) carcinogenic chemicals/ substances/ agents, as listed by “World Health Organisation” and “International Agency for Research on Cancer” as Group 1, Group 2-A and Group 2-B Carcinogens.

And

for issuance of suitable orders/ directions/ instruction and/or a Writ in the nature of mandamus directing the respondents to define clear time-lines, in a time-bound manner, within which all products containing any identified carcinogens would be phased out and discontinued and all industries/ businesses engaged in such carcinogens would be closed down. Wherever there's any reason, or an absolute need to use any carcinogen, the same be specifically mentioned with a clear out-line, with time-lines of a time-bound plan to minimise its production/ use/ trade/ exposure in tangibly visible quantifiable manner; with a proper scientific supervisory and oversight mechanism.

And

for issuance of suitable orders/ directions/ instruction and/or a Writ in the nature of mandamus directing the respondents to have proper “Occupation Safety and Health” mechanism, including trainings, which are strictly enforced with proper supervisory and oversight mechanism; along with the

provision/ use of multi-lingual graphic warnings and instructions.

And

for issuance of suitable orders/ directions/ instruction and/or a writ in the nature of Mandamus directing the respondents to conduct proper independent studies and undertake independent research (without any association/ influence from the industry and/or its agents) to evaluate the overall risks, and ascertain the risk assessment and undertake risk analysis of all agent/ chemicals/ substances to ascertain their mutagenic and carcinogenic properties.

And

for issuance of suitable orders/ directions/ instruction and/or for issuance of a Writ in the nature of Mandamus directing the respondents to make suitable arrangements to compensate/ care/ provide damages, wherein any person who is exposed to any of identified carcinogens during his life-time; either at his work-place due to exposure to a carcinogen, or due to a commercially marketed product which has an identified carcinogen; and subsequently gets affected by cancer or any other disease attributable to mutagenic characteristics of the substance (of exposure), is adequately compensated by the company/ industry/ person/ organisation, because of which he/she got exposed; besides the assistance from the State.

for issuance of suitable orders/ directions/ instruction/ Writ  
which this Hon'ble court deems fit.

**RESPECTIVELY SHOWETH:**

- 1) That the Petitioner is a social worker working on many issues of public importance; for the overall development and well-being of the society. The petitioner is associated with many civil society organisations, including Burning Brain Society, Cancer Free World, Citizens' Voice, Servants of the People Society, Society for Prevention of Crime and Corruption, etc. and has earned national and international recognition for his work.
- 2) That the petitioner is a citizen of India, and as a concerned citizen is entitled to invoke this extra-ordinary Writ jurisdiction of this Hon'ble court by way of the present Public Interest Litigation. The petitioner also has a fundamental duty as enshrined in Article 51-A to move this hon'ble court in the spirit of Article 51-A. The petitioner is moved by the continuous exponential growth of cancer patients, especially due to unrestricted sale/ exposure of known carcinogens; which in future is expected to express in much bigger problem if the sale/exposure of known carcinogens is not stopped. The petitioner has no direct or indirect personal interest or motive, in the present civil writ petition.
- 3) That Article 21 of the Constitution of India guarantees right to life and personal liberty to all citizens of India.
- 4) That one of the leading causes of cancers is the exposure of victims to mutagens (Substances which causes mutations/abnormalities in body cells/ DNA) and/or carcinogenic agents/ substance/ chemicals.
- 5) That the constitution of India guarantees protection of life and personal liberty. Article 21 of the Constitution of India reads as follows; "Article 21: Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law."
- 6) That in February 2013, the Government of Punjab conducted a

'Cancer Survey' across Punjab and found that there was high prevalence of Cancer in the State of Punjab. Thousands of earlier unknown cases of Cancer were identified across Punjab. (Annexure P-3) The Government did not provide any specific reason for the same; however it was pointed out that possibly high use of pesticides and chemical fertilizers may also have contributed in more than one ways.

7) That "International Agency for Research on Cancer (IARC)" of "World Health Organisation," in its over 48 years of research has identified certain carcinogens and categorised them on the basis of evidence available and the known potential of causing cancer. IARC has labelled the carcinogens in four broad categories, they are;

I. **Group 1:** The agent is carcinogenic to humans. This category is used when there is sufficient evidence of carcinogenicity in humans.

II. **Group 2:** This category includes agents for which, at one extreme, the degree of evidence of carcinogenicity in humans is almost sufficient, as well as those for which, at the other extreme, there are no human data but for which there is evidence of carcinogenicity in experimental animals.

1) **Group 2A:** The agent is probably carcinogenic to humans.

2) **Group 2B:** The agent is possibly carcinogenic to humans

III. **Group 3:** The agent is not classifiable as to its carcinogenicity to humans

IV. **Group 4:** The agent is probably not carcinogenic to humans; or there is inadequacy of data for causing cancers to humans.

The list of identified agents, as provided by IARC, is annexed as **Annexure P-1.**

8) That details of the agents and carcinogens is available at the website of WHO and IARC at

<http://www.iarc.fr/en/publications/list/monographs/index.php> in literature and monographs contained in 106 volumes, numbered from 1 to 106. The same is an internationally acknowledged and accepted scientific record and evidence of the carcinogenic agents. All literature is downloadable from the said website of IARC. A list of some of the publicly available monographs and literature is annexed as **Annexure P-2**.

- 9) That India is a permanent member of the UN and the WHO, and actively participates and conducts joint research, and absolutely rely on all WHO data and standards for devising internal policies.
  
- 10) That there is also a 'Globally Harmonized System of Classification and Labelling of Chemicals (GHS)' which is a United Nations initiative to attempt to harmonize the different systems of assessing chemical risk which currently exist around the world. It classifies carcinogens into two categories, of which the first may be divided again into subcategories if so desired by the competent regulatory authority. These categories are similar to IARC and are known as; Category 1: known or presumed to have carcinogenic potential for humans. Category 1A: the assessment is based primarily on human evidence. Category 1B: the assessment is based primarily on animal evidence. Category 2: suspected human carcinogens. The European Union classification of carcinogens is contained in the "Dangerous Substances Directive and the Dangerous Preparations Directive." It consists of three categories; which has now also been brought in line with 'Globally Harmonized System of Classification and Labelling of Chemicals (GHS).' In the United States; the 'Environment Protection Agency,' also manages programs under the "Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA)" of 1990. The 'National Toxicology Program' of the U.S. Department of Health and Human Services is also mandated to produce a biennial Report on Carcinogens. In Australia also, under Occupation Safety provisions, the NOHSC, brings-out the approved criteria for classifying hazardous Substances outlining the criteria for classifying carcinogens as approved by the Australian government. This classification also consists of three categories.

- 11) That many commercial products contain agents/ substance/ chemicals which fall under the category of Group 1, 2A and 2-B and are freely marketed/ used by industry/ companies/ organizations for consumption and/or to which workers/ employees are continuously exposed. There are also many procarcinogen which are in use (Procarcinogen are precursor to one or more carcinogen. An example of it is nitrites; when taken in by the diet. Procarcinogen are not carcinogenic themselves, but turn into nitrosamines in the body, which are carcinogenic.) which also needs to be prohibited/ or strictly regulated (If absolutely necessary and no alternatives are available).
- 12) That continuous exposure to certain substances/ chemicals in Group 1 and 2 items, in a particular occupation leads to an increased risk of cancer. The respondents have no policy/ guidelines/ provisions/ compensatory mechanism w.r.t. 'Occupational Safety' of such carcinogens.
- 13) That the State has no reason/ justification or rationale to expose people to products/ substances containing Group I and Group II carcinogens, knowing fully well that sufficient scientific international evidence from various agencies, including the 'World Health Organisation,' exist about the cancer-causing and mutagenic nature of substances mentioned in Group I and Group II of the IARC list.
- 14) That the State can not deprive the innocent and ignorant people of their lives and push them to an almost sure-shot death by creating an environment/ conditions which cause cancer and other such life-threatening serious ailments.
- 15) That according to the Global Cancer Atlas and WHO record, the average five years survivorship rate of a person affected by Cancer in India is less than 2 per hundred. This means that even if Cancer is detected, still, on-an-average only 2 out of 100 people are likely to live beyond 5 year period, even after resorting to costly healthcare and treatment.
- 16) That while the industry/ business organisation/ company/ factory keeps the profit/ gain/ arising out of its business/ trade/ commerce/ engagement in such products which expose people to carcinogens;

it's the State and the Public which bears the cost of such exposure in direct and indirect manner by increased healthcare cost, increased State liability, loss of quality man-power, loss of opportunity cost, reduced efficiency due to overload on the system caused by avoidable ailments, etc.

17) That in most cases, the public is not even aware that such substances will cause deadly disease and deprive them and their family of their life. In a few cases, where there are printed warning on some selected products, the same is insufficient and in a large population of over 125 Crores, with high illiteracy and variety of languages spoken, these warnings serve no purpose at-all. Most people/ lay-people using such substance also lack scientific temper and can often not even comprehend the details of such instructions written in small font sizes. Moreover, when such products get into common use and are freely advertised, the alert-level or the dangers are not even considered seriously.

18) That it's a well known fact that many high ranking officers and public servants in the Government turn a blind eye to such harmful products/ substances for extraneous corrupt gains and thereby in corrupt collusion omit to stop such carcinogens from being produced, circulated and/or marketed. On the contrary, such officers/ public-servants illegally use their position to justify the use of such harmful products/ substance. The unholy nexus and collusion between the industry and the public servants result in a situation which results in mortality and morbidity of a large number of people; which is no less than cold-blooded murder. Tweaking of the policies/ rules, and deliberate failure to supervise and oversee; which consequently resulting in the death of lakhs of people, is much more severe and serious crime than the cruellest of the murder.

19) That a deliberate neglect, and/or collusion to allow harmful and carcinogens to be circulated/marketed/ traded by deliberately omitting to exercise due-diligence and/or by not adopting a precautionary principle, amounts to culpable homicide whenever a person loses his/her life due to such omission/ neglect/ corrupt collusion; for which the industry which directly produces/ circulates

such material as-well-as the public servants responsible for omission/ neglect/ corrupt collusion, and for insufficient oversight/ precaution deserves to be treated and punished as co-accomplice and co-conspirator of such a culpable homicide.

- 20) That it is the duty of the State (the respondents) to ensure that all those substances/ chemicals/ items which cause Cancer and which are unnecessary/ of only pleasure-seeking form/ of cosmetic value/ which can be substituted by other absolutely safer options; must be discontinued immediately.
- 21) That it is the duty of the State to have proper "Occupational Safety and Health" guidelines, which are in reality adhered-to and followed for all such manufacturing processes/ occupations where continuous exposure increases the risk of Cancer and other serious ailments.
- 22) That it is also the duty of the State to fix liabilities and devise an effective compensatory mechanism for all such occupations/ process/ substances wherein the business establishment/ organisation/ State is made to automatically compensate a person who acquires any ailment, which is known to be acquired by exposure of a person to such processes/ chemicals/ substances/ process with which the business establishment/ organisation/ State is engaged in. Sufficient duration of exposure of the person to the processes/ chemicals/ substances/ process related to the business establishment/ organisation/ State in itself should be considered as enough reason to compensate the individual.
- 23) That the respondents (State) must ensure that where the collusion between the public servants and industry/business-establishment comes to light, or where omission of oversight or omission to act is apparent; due to which any such harmful substance reaches the public; strict criminal and civil action should be taken against the public servant and each and every person involved in the business-establishment.
- 24) That the list of the WHO/ IARC about carcinogens is not complete and there is a possibility that many other substance/ articles not mentioned in the list are equally or more harmful. There is a need

for continuous research (without any association/ influence from the industry and/or its agents) to find evidence and detect the carcinogenic and mutagenic properties of chemicals/ substances/ articles/ etc. in a proper and scientific manner. Such research is required to be continuously carried out by our public-institutions and through public sponsored schemes. As-of-date no such mechanism exists. The State is required to undertake such research and establish a mechanism to identify harmful substances/ chemicals/ products and ensure due-diligence at all levels.

- 25) That Article 21 of the Constitution guarantees protection of life and liberty; Article 14 guarantees equality before law and equal protection of law. Article 38, 42, 47 directs the state to make such laws and policies which are for general welfare, ensuring protection from harmful substance, including intoxicants, and resulting in raised standards of nutrition and quality of life. Thereby the State has a duty to protect the life of each-and-every citizen and treat all individuals/ persons equally without according any preference to the artificial-person, i.e. the business entities/ companies over the natural-person, i.e. the individual citizens. Protecting the life and liberty of a Citizen is much more important than protecting the financial health of an artificial-person, who is actually no more than a fictional creation of a legal instrument on paper.
- 26) That State, if it so thinks appropriate, can also legislate to prohibit and ban all dangerous agents/ substance/ chemicals, in-line with the mandate of Article 21 of the Constitution of India. Though, notwithstanding the (desirable) initiative to create any new legislation; the State has a binding duty under Article 21 to prohibit from use all substances/ chemicals/ agents which are known to cause Cancer.
- 27) That Article 21 is the essence of the Constitution; the Constitution and the State survives only if the citizens survive. It's the people, who have actually got together to form a governance system and have given themselves a Constitution (and the State) for better life, existence and liberty. If the State fails to protect the life of its citizens and promote common good, the concept behind the formation of the State and the Constitution is defeated completely.

- 28) That no person, including the Government, has any fundamental right, or any other right, to trade in any article/ agent/ substance which have the effect of depriving any person of his/her life. That even Article 19(6) allows for reasonable restrictions to be imposed on any person (from engaging in any trade/profession) for protecting the interest of the public and enables the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the rights under Article 19(1)(g). Article 21, in any case, will always override and have precedence over rights guaranteed under Article 19(1)(g).
- 29) That Article 51-A makes it a duty of every citizen to have compassion for living creatures, environment and wild-life. It also calls for a duty to develop a scientific temper and humanism with a spirit of inquiry and reform. Even though the language of Article 51-A is narrow to bestow this duty only on Citizens (and not person), yet every artificial juristic-person is the creation of natural-person/ citizens; and consequently creation of an artificial juristic-person does not mean that the collective duty of all the founders of the juristic-person do not pass on the same duty (and liability) to the created corporation. Thereby all Citizens, as well as Person are expected to discharge their duties, as provided under Article 51-A.

The petitioner craves indulgence of this Hon'ble Court for appropriate directions so as to protect fundamental rights of the citizens.

### **LAW POINTS**

- 30) That the law points involved in this Writ petition are as follows: -
- I. Whether it is the duty of the State to protect the life of every citizen from direct and indirect dangers and harms.
  - II. Whether the Constitution of India grants protection of life of each and every citizen.
  - III. Whether the State has a duty to prohibit and stop trade in identified carcinogenic and harmful substances.
  - IV. Whether it is the duty of the State to provide for a proper compensatory mechanism to ensure payment of compensation to citizens who suffer because of States

policies and neglect w.r.t. protection of their life.

V. Whether knowingly exposing any group of citizens, or any citizen, is a violation of Article 14 and 21.

VI. Whether the life of Citizens will have precedence over the financial profits of an artificial person in the form of a company, etc.

31) That the petitioner has not filed any such Writ petition in this Hon'ble Court or Supreme Court of India.

32) That Annexure P-1 and P-2 are public documents, it's the official record and a public document from the website of WHO and IARC at <http://www.iarc.fr/en/publications/list/monographs/index.php> and [www.who.int](http://www.who.int). That certified copies of P-1 and P-2 are not available. Exemption may be granted from filing certified copy of the public record related to WHO and IARC, annexed as P-1 and P-2.

33) That it is a fit case in which this Hon'ble Court may be pleased to intervene. The matter is also of vital general importance, affecting the entire population not only of this region but also of India, and therefore requires intervention of this Hon'ble Court.

34) That there is no other alternative remedy, appeal and revision available to the petitioner except approaching this Hon'ble Court under Article 226/227 of the Constitution of India.

### **PRAYER**

35) It is, therefore, respectfully prayed, that in view of the facts mentioned above this Hon'ble Court may be pleased to allow the following relief:-

I. Suitable orders/ directions/ instruction and/or a Writ in the nature of mandamus be issued directing the respondents to prohibit and restrict the use of Group 1, 2A & 2B (known, probable and possible) carcinogenic chemicals/ substances/ agents, as listed by "World Health Organisation" and "International Agency for Research on Cancer" as Group 1, Group 2-A and Group 2-B Carcinogens.

- II. Suitable orders/ directions/ instruction and/or a Writ in the nature of mandamus be issued directing the respondents to define clear time-lines, in a time-bound manner, within which all products containing any identified carcinogens would be phased out and discontinued and all industries/ businesses engaged in such carcinogens would be closed down. Wherever there's any reason, or an absolute need to use any carcinogen, the same be specifically mentioned with a clear out-line, with time-lines of a time-bound plan to minimise its production/ use/ trade/ exposure in tangibly visible quantifiable manner; with a proper scientific supervisory and oversight mechanism.
- III. Suitable orders/ directions/ instruction and/or a Writ in the nature of mandamus be issued directing the respondents to have proper "Occupation Safety and Health" mechanism, including trainings, which are strictly enforced with proper supervisory and oversight mechanism; along with the provision/ use of multi-lingual graphic warnings and instructions.
- IV. Suitable orders/ directions/ instruction and/or a writ in the nature of Mandamus be issued directing the respondents to conduct proper independent studies and undertake independent research (without any association/ influence from the industry and/or its agents) to evaluate the overall risks, and ascertain the risk assessment and undertake risk analysis of all agent/ chemicals/ substances to ascertain their mutagenic and carcinogenic properties.
- V. Suitable orders/ directions/ instruction and/or for issuance of a Writ in the nature of Mandamus be issued directing the respondents to make suitable arrangements to compensate/ care/ provide damages, wherein any person who is exposed to any of identified carcinogens during his life-time; either at his work-place due to exposure to a carcinogen, or due to a commercially marketed product which has an identified carcinogen; and subsequently gets affected by cancer or any other disease attributable to mutagenic characteristics of the substance (of exposure), is adequately

compensated by the company/ industry/ person/ organisation, because of which he/she got exposed; besides the assistance from the State.

VI. Any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case.

Chandigarh  
27.02.2013

Hemant Goswami  
Petitioner-in-person

Through

A.P.S. Shergill  
Advocate  
P-810/1993

Harish Mehla  
Advocate  
P-2901/2009

VERIFICATION:-

Verified that the contents of paras No. 1 to 29 and para No. 31 to 34 of the petition are true and correct to my knowledge, whereas, contents in para no. 30 and 35 are based on legal advice which I believe to be true and correct. No part of it is false and nothing has been concealed therein.

Chandigarh  
27.02.2013

**Hemant Goswami**  
Petitioner-in-person

