IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3187-88 OF 1988

WITH

SPECIAL LEAVE PETITION (CIVIL) NO. 13080 OF 1988

UNION CARBIDE CORPORATION

(Petitioner)

Versus

UNION OF INDIA

JANA SWASTHYA KENDRA,
Bhopal, M.P.

ZAHREELI GAS KAND SANGHARSH MORCHA
Bhaopal, M.P.

(Respondents)

ORDER

The Bhopal Gas Leak tragedy that occurred at midnight on 2nd December, 1984, by the escape of deadly chemical fumes from the appellant's pesticide-factory was a horrendous industrial mass disaster, unparalleled in its magnitude and devastation and remains a ghastly monument to the de-humanising influence of inherently dangerous technologies. The tragedy took an immediate toll of 2,660 innocent human lives and left tens of thousands of innocent citizens of Bhopal physically impaired or affected in various degrees. What added grim poignance to the tragedy was that the industrial-enterprise was using Methyl Isocyanate, a lethal toxic poison, whose potentiality for destruction of life and biotic-communities was, apparently, matched only by the lack of a pre-package of relief procedures for management of any accident based on adequate scientific knowledge as to the ameliorative medical procedures for immediate neutralisation of its effects.

It is unnecessary for the present purpose to refer, in any detail, to the somewhat meandering course of the legal proceedings for the recovery of compensation initiated against the multi-national company initially in the Courts in the United States of America and later in the District Court at Bhopal in Suit No. 113 (*sic*) of 1986. It would suffice to refer to the order dated 4 April, 1988 of the High Court of Madhya Pradesh which, in modification of the interlocutory-order dated 17 December, 1987 made by the learned District Judge, granted an interim compensation of Rs. 250/-crores. Both the Union of India and the Union Carbide Corporation appealed against that order.

This court by its order dated 14 February, 1989 made in those appeals directed that there be an overall settlement of the claims in the suit, for 470 million US dollars and termination of all civil and criminal proceedings. The opening words of the order said :

> Having given our careful consideration for these several days to the facts and circumstances of the case placed before us by the Parties in these proceedings, including the pleadings of the parties, the mass of data placed before us, the material relating to the proceedings in the Courts in the United States of America, *the offers and counter-offers made between the parties at different stages during the various proceedings*, as well as the complex issues of law and fact raised before us and the submissions made thereon, and in particular the enormity of human suffering occasioned by the Bhopal Gas disaster and *the pressing urgency to provide immediate and substantial relief to victims of the disaster*, we are of opinion that the case is pre-eminently fit for an overall settlement between the parties covering all litigations, claims, rights and liabilities related to and arising out of the disaster.... (Emphasis Supplied)

It appears to us that the reasons that persuaded this Court to make the order for settlement should be set-out, so that those who have sought a review might be able effectively to assist the Court in satisfactorily dealing with the prayer for a review. The statement of the reasons is not made with any sense of finality as to the infallibility of the decision; but with an open mind to be able to appreciate any tenable and compelling legal or factual infirmities that may be brought out, calling for remedy in Review under Article 137 of the Constitution.

The points on which we propose to set-out brief reasons are the following :

(a) How did this court arrive at the sum of 470 million US dollars for an overall settlement?
(b) Why did the Court consider this sum of 470 million US dollars as 'just, equitable and reasonable'?
(c) Why did the Court not pronounce on certain important legal questions of far reaching importance said to arise in the appeals as to the principles of liability of monolithic, economically entrenched multi-national companies operating with inherently dangerous technologies in the developing countries of the third world—questions said to be of great contemporary relevance to the democracies of the third-world?

There is yet another aspect of the Review pertaining to the part of the settlement which terminated the criminal proceedings. The questions raised on the point in the Review-petitions, *prima facie*, merit consideration and we should, therefore, abstain from saying anything which might tend to pre-judge this issue one way or the other.

The basic consideration motivating the conclusion of the settlement was the compelling need for urgent relief. The suffering of the victims has been intense

and unrelieved. Thousands of persons who pursued their own occupations for an humble and honest living have been rendered destitute by this ghastly disaster. Even after four years of litigation, basic questions of the fundamentals of the law as to liability of the Union Carbide Corporation and the quantum of damages are yet being debated. These, of course, are important issues which need to be decided. But, when thousands of innocent citizens were in near destitute conditions, without adequate subsistential needs of food and medicine and with every coming morrow haunted by the spectre of death and continued agony, it would be heartless abstention, if the possibilities of immediate sources of relief were not explored. Considerations of excellence and niceties of legal principles were greatly overshadowed by the pressing problems of very survival for a large number of victims.

The Law's delays are, indeed, proverbial. It has been the unfortunate bane of the judicial process that even ordinary cases, where evidence consists of a few documents and the oral testimony of a few witnesses, require some years to realise the fruits of litigation. This is so even in cases of great and unquestionable urgency such as fatal accident actions brought by the dependents. These are hard realities. The present case is one where damages are sought on behalf of the victims of a mass disaster and, having regard to the complexities and the legal questions involved, any person with an unbiased vision would not miss the time consuming prospect for the course of the litigation in its sojourn through the various courts, both in India and later in United States.

It is indeed a matter for national introspection that public response to this great tragedy which affected a large number of poor and helpless persons limited itself to the expression of understandable anger against the industrial enterprise but did not channel itself in any effort to put together a public supported relief fund so that the victims were not left in distress, till the final decision in the litigation. It is well known that during the recent drought in Gujarat, the devoted efforts of public spirited persons mitigated, in great measure, the loss of cattle-wealth in the near famine conditions that prevailed.

This Court, considered it a compelling, duty, both judicial and humane, to secure immediate relief to the victims. In doing so, the Court did not enter upon any forbidden ground. Indeed, efforts had earlier been made in this direction by Judge Keenan in the United States and by the learned District Judge at Bhopal. What this Court did was in continuation of what had already been initiated. Even at the opening of the arguments in the appeals, the Court had suggested to learned counsel on both sides to reach a just and fair settlement. Again, when counsel met for re-scheduling of the hearings the suggestion was reiterated. The response of learned counsel on both sides was positive in attempting a settlement, but they expressed a certain degree of uneasiness and scepticism at the prospects of success in view of their past experience of such negotiations when, as they stated, there had been uninformed and even irresponsible criticism of the attempts at settlement. The learned Attorney General submitted that even the most *bona fide*, sincere and devoted efforts at settlements were likely to come in for motivated criticism.

The Court asked learned counsel to make available the particulars of offers and counter offers made on previous occasions for a mutual settlement. Learned counsel for both parties furnished particulars of the earlier offers made for an overall settlement and what had been considered as a reasonable basis in that behalf. The

progress made by previous negotiations was graphically indicated and those documents form part of the record. Shri Nariman stated that his client would stand by its earlier offer of Three Hundred and Fifty Million US dollars and also submitted that his client had also offered to add appropriate interest, at the rates prevailing in the U.S.A., to the sum of 350 million US dollars which raised the figure to 426 million US dollars. Shri Nariman stated that his client was of the view that that amount was the highest it could go upto. In regard to this offer of 426 million US dollars the learned Attorney-General submitted that he could not accept this offer. He submitted that any sum less than 500 million US dollars would not be reasonable. Learned counsel for both parties stated that they would leave it to the Court to decide what should be the figure of compensation. The range of choice for the Court in regard to the figure was, therefore, between the maximum of 426 million US dollars offered by Shri Nariman and the minimum of 500 million US dollars suggested by the learned Attorney General.

In these circumstances, the Court examined the *prima facie* material as to the basis of quantification of a sum which having regard to all the circumstances including the prospect of delays inherent in the judicial-process in India and thereafter in the matter of domestication of the decree in the United States for the purpose of execution and directed that 470 million US dollars, which upon immediate payment and with interest over a reasonable period, pending actual distribution amongst the claimants, would aggregate very nearly to 500 million US dollars or its rupee equivalent of approximately Rs. 750/-crores which the learned Attorney General had suggested, be made the basis of the settlement. Both the parties accepted this direction.

The settlement proposals were considered on the premise that Government had the exclusive statutory authority to represent and act on behalf of the victims and neither counsel had any reservation as to this. The order was also made on the premise that the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Act, 1985 was a valid law. In the event the Act is declared void in the pending proceedings challenging its validity, the order dated 14 February, 1989 would require to be examined in the light of that decision.

We should make it clear if any material is placed before this Court from which a reasonable inference is possible that the Union Carbide Corporation had, at any time earlier, offered to pay any sum higher than an out-right down payment of US 470 million dollars, this Court would straightway initiate *suo motu* action requiring the concerned parties to show cause why the order dated 14 February, 1989 should not be set aside and the parties relegated to their respective original positions.

The next question is as to the basis on which this Court considered this sum to be a reasonable one. This is not independent of its quantification; the idea of reasonableness for the present purpose is necessarily a broad and general estimate in the context of a settlement of the dispute and not on the basis of an accurate assessment by adjudication. The question is how good or reasonable it is as a settlement, which would avoid delays, uncertainties and assure immediate payment. The estimate, in the very nature of things, cannot share the accuracy of an adjudication. Here again one of the important considerations was the range disclosed by the offers and counter offers which was between 426 million US

dollars and 500 million US dollars. The Court also examined certain materials available on record including the figures mentioned in the pleadings, the estimate made by the High Court and also certain figures referred to in the course of the arguments.

There are a large number of claims under the Act. In the very nature of the situation, doubts that a sizeable number of them are either without any just basis or were otherwise exaggerated could not be ruled out. It was, therefore, thought not unreasonable to proceed on some *prime facie* undisputed figures of cases of death and of substantially compensatable personal injuries. The particulars of the number of persons treated at the hospitals was an important indicator in that behalf. This Court had no reason to doubt the *bona fides* of the figures furnished by the plaintiff itself in the pleadings as to the number of persons suffering serious injuries.

From the order of the High Court and the admitted position on the plaintiff's own side, a reasonable, *prime facie*, estimate of the number of fatal cases and serious personal injury cases, was possible to be made. The High Court said :

> ....In the circumstances, leaving a small margin for the possibility of some of the claims relating to death and personal injuries made by the multitude of claims before the Director of Claims of the State Government being spurious, *there is no reason to doubt that the figure furnished by the plaintiff Union of India in its amended plaint can be safely accepted for the purpose of granting the relief of interim payment of damages. It has been stated by the plaintiff-Union of India that a total number of 2660 persons suffered agonising and excruciating deaths and between 30000 to 40000 sustained serious injuries as a result of the disaster....* (Emphasis supplied)

There is no scope for any doubt that the cases referred to as those of 'serious injuries' include both types of cases of permanent total and partial disabilities of various degrees as also cases of temporary total or partial disabilities of different degrees. The High Court relied upon the averments and claims in the amended pleadings of the plaintiff, the Union of India, to reach this *prima facie* finding.

Then, in assessing the quantum of interim compensation the High Court did not adopt the standards of compensation usually awarded in fatal-accidents-actions or personal-injury-actions arising under the Motor Vehicles Act. It is well-known that in fatal-accident-actions where children are concerned, the compensation awardable is in conventional sums ranging from Rs. 15,000/- to Rs. 30,000/- in each case. In the present case a large number of deaths was of children of very young age. Even in the case of adults, according to the general run of damages in comparable cases, the damages assessed on the usual multiplier-method in the case of income groups comparable to those of the deceased-persons, would be anywhere between Rs. 80,000/- and Rs. 1,00,000/-.

But the High Court discarded, and rightly, these ordinary standards which, if applied, would have limited the aggregate of compensation payable in fatal cases to a sum less than Rs. 20/- crores in all. The High Court thought it should adopt

the broader principle in *M.C. Mehta* v. *Union of India.*[1] Stressing the need to apply such a higher standard, the High Court said :

> As mentioned earlier, *the measure of damages payable by the alleged tort-feaser as per the nature of tort involved in the suit has to be correlated to the magnitude and the capacity of the enterprises because such compensation must have a deterrent effect....* (Emphasis supplied)

Applying these higher standards of compensation, the High Court proceeded to assess damages in the following manner :

> Bearing in mind, the above factors, in the opinion of this Court, it would not be unreasonable to assume that if the suit proceeded to trial the plaintiff-Union of India would obtain judgment in respect of the claims relating to deaths and personal injuries at least in the following amounts :(a) *Rs. 2 lakhs in each case of death;* (b) *Rs. 2 lakhs in each case of total permanent disability* (c) *Rs. 1 lakh in each case of permanent partial disablement; and* (d) *Rs. 50,000/- in each case of temporary partial disablement.* (Emphasis supplied)

Half of these amounts were awarded as interim compensation. An amount of Rs. 250/- crores was awarded.

The figures adopted by the High Court in regard to the number of fatal cases and cases of serious personal injuries do not appear to have been disputed by anybody before the High Court. These data and estimates of the High Court had a particular significance in the settlement. Then again, it was not disputed before us that the total number of fatal cases was about 3000 and of grievous and serious personal injuries, as verifiable from the records of the hospitals of cases treated at Bhopal, was in the neighbourhood of 30,000. It would not be unreasonable to expect that persons suffering serious and substantially compensatable injuries would have gone to hospitals for treatment. It would also appear that within about 8 months of the occurrence, a survey had been conducted for purposes of identification of cases of death and grievous and serious injuries for purposes of distribution of certain *ex gratia* payments sanctioned by Government. These figures were, it would appear, less than ten thousand.

In these circumstances, as a rough and ready estimate, this Court took into consideration the *prima facie* findings of the High Court and estimated the number of fatal cases at 3000 where compensation could range from Rs. 1 lakh to Rs. 3 lakhs. This would account for Rs. 70/-crores, nearly 3 times higher than what would, otherwise, be awarded in comparable cases in motor vehicles accident claims.

Death has an inexorable finality about it. Human lives that have been lost were precious and in that sense priceless and invaluable. But the law can compensate the estate of a person whose life is lost by the wrongful act of another only in the way the law is equipped to compensate i.e. by monetary compensations

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1 AIR 1987 SC 1086.

calculated on certain well-recognised principles. "Loss to the estate" which is the entitlement of the estate and the 'loss of dependancy' estimated on the basis of capitalised present-value awardable to the heirs and dependents, are the main components in the computation of compensation in fatal accident actions. But, the High Court in estimating the value of compensation had adopted a higher basis.

So far as personal injury cases are concerned, about 30,000 was estimated as cases of permanent total or partial disability. Compensation ranging from Rs. 2 lakhs to Rs. 50,000/- per individual according as the disability is total or partial and degrees of the latter was envisaged. This alone would account for Rs. 250/-crores. In another 20,000 cases of temporary total or partial disability compensation ranging from Rs. 1 lakh down to Rs. 25000/- depending on the nature and extent of the injuries and extent and degree of the temporary incapacitation accounting for a further allocation of Rs. 100/- crores, was envisaged. Again, there might be possibility of injuries of utmost severity in which case even Rs. 4 lakhs per individual might have to be considered. Rs. 80 crores, additionally for about 2000 of such cases were envisaged. A sum of Rs. 500 crores approximately was thought of as allocable to the fatal cases and 42,000 cases of such serious personal injuries leaving behind in their trail total or partial incapacitation either of permanent or temporary character.

It was considered that some outlays would have to be made for specialised institutional medical treatment for cases requiring such expert medical attention and for rehabilitation and after care. Rs. 25/- crores for the creation of such facilities was envisaged.

That would leave another Rs. 225/- crores. It is true that in assessing the interim compensation the High Court had taken into account only the cases of injuries resulting in permanent or temporary disabilities—total—or partial—and had not adverted to the large number of other claims, said to run into lakhs, filed by other claimants.

Such cases of claims do not, apparently, pertain to serious cases of permanent or temporary disabilities but are cases of a less serious nature, comprising claims for minor injuries, loss of personal belongings, loss of livestock etc., for which there was a general allocation of Rs.225/-crores. If in respect of these claims allocations are made at Rs. 20,000/-, Rs. 15,000/- and Rs. 10,000/- for about 50,000-persons or claims in each category—accounting for about one and half lakhs more claims—the sums required would be met by Rs. 225/- crores.

Looked at from another angle, if the corpus of Rs. 750/- crores along with the current market rates of interest on corporate borrowings,of say 14% or 14½% is spent over a period of eight years it would make available Rs. 150/- crores each year; or even if interest alone is taken, about Rs. 105 to 110 crores per year could be spent, year-after-year, perpetually towards compensation and relief to the victims.

The court also took into consideration the general run of damages in comparable accident claim cases and in cases under workmens compensation laws. The broad allocations made are higher than those awarded or awardable in such claims. These apportionments are merely broad considerations generally guiding the idea of reasonableness of the overall basis of settlement. This exercise is not a pre-determination of the quantum of compensation amongst the claimants either

individually or category-wise. No individual claimant shall be entitled to claim a particular quantum of compensation even if his case is found to fall within any of the broad categories indicated above. The determination of the actual quantum of compensation payable to the claimants has to be done by the authorities under the Act, on the basis of the facts of each case and without reference to the hypothetical quantifications made only for purposes of an overall view of the adequacy of the amount.

These are the broad and general assumptions underlying the concept of 'justness' of the determination of the quantum. If the total number of cases of death or of permanent, total or partial, disabilities or of what may be called 'catastrophic' injuries is shown to be so large that the basic assumptions underlying the settlement become wholly unrelated to the realities, the element of 'justness'of the determination and of the 'truth'of its factual foundation would seriously be impaired. The 'justness' of the settlement is based on these assumptions of truth. Indeed, there might be different opinions on the interpretation of laws or on questions of policy or even on what may be considered wise or unwise; but when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said :

> Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial....

As to the remaining question, it has been said that many vital juristic principles of great contemporary relevance to the Third World generally, and to India in particular, touching problems emerging from the pursuit of such dangerous technologies for economic gains by multi-nationals arose in this case. It is said that this is an instance of lost opportunity to this apex Court to give the law the new direction on vital issue emerging from the increasing dimensions of the economic exploitation of developing countries by economic forces of the rich ones. This case also, it is said, concerns the legal limits to be envisaged, in the vital interests of the protection of the constitutional rights of the citizenry, and of the environment, on the permissibility of such ultra-hazardous technologies and to prescribe absolute and deterrent standards of liability if harm is caused by such enterprises. The prospect of exploitation of cheap labour and of captive-markets, it is said, induces multi-nationals to enter into the developing countries for such economic-exploitation and that this was eminently an appropriate case for a careful assessment of the legal and constitutional safeguards stemming from these vital issues of great contemporary relevance.

These issues and certain cognate areas of even wider significance and the limits of the adjudicative disposition of some of their aspects are indeed questions of seminal importance. The culture of modern industrial technologies, which is sustained on processes of such pernicious potentialities, in the ultimate analysis, has thrown open vital and fundamental issues of technology-options. Associated

problems of the adequacy of legal protection against such exploitative and hazardous industrial adventurism, and whether the citizens of the country are assured the protection of a legal system which could be said to be adequate in a comprehensive sense in such contexts arise. These, indeed, are issues of vital importance and this tragedy, and the conditions that enabled it happen, are of particular concern.

The chemical pesticide industry is a concomitant, and indeed, an integral part, of the Technology of Chemical Farming. Some experts think that it is time to return from the high-risk, resource-intensive, high-input, anti-ecological, monopolistic 'hard' technology which feeds, and is fed on, its self-assertive attribute, to a more human and humane, flexible, eco-conformable, "soft" technology with its systemic-wisdom and opportunities for human creativity and initiative. "Wisdom demands" says Schumacher "a new orientation of science and technology towards the organic, the gentle, the non-violent, the elegant and beautiful". The other view stressing the spectacular success of agricultural production in the new era of chemical farming, with high-yielding strains, points to the break-through achieved by the Green Revolution with its effective response to, and successful management of, the great challenges of feeding the millions. This technology in agriculture has given a big impetus to enterprises of chemical fertilizers and pesticides. This, say its critics, has brought in its trail its own serious problems. The technology-options before scientists and planners have been difficult.

Indeed, there is also need to evolve a national policy to protect national interests from such ultra-hazardous pursuits of economic gains. Jurists, technologists and other experts in economics, environmentology, futurology, sociology and public health etc. should identify areas of common concern and help in evolving proper criteria which may receive judicial recognition and legal sanction.

One aspect of this matter was dealt with by this Court in *M.C. Mehta* v. *Union of India* (supra) which marked a significant stage in the development of the law. But, at the hearing there was more than a mere hint in the submissions of the Union Carbide that in this case the law was altered with only the Union Carbide Corporation in mind, and was altered to its disadvantage even before the case had reached this court. The criticism of the *Mehta* principle, perhaps, ignores the emerging postulates of tortious liability whose principal focus is the social-limits on economic adventurism. There are certain things that a civilised society simply cannot permit to be done to its members, even if they are compensated for their resulting losses. We may note a passage in *"Theories of Compensation"*.[2]

> It would, however, be wrong to presume that we as a society can do anything we like to people, just so long as we compensate them for their losses. Such a proposition would mistake part of the policy universe for the whole. The set of policies to which it points— policies that are 'permissible, but only with compensation'— is bounded on the one side by a set of policies that are 'permissible, even without compensation' and on the other side by a set of policies that are 'impermissible, even with compensation'.

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2 R.E. Goodin : Oxford Journal of Legal Studies, 1989, P. 57.

But, in the present case, the compulsions of the need for immediate relief to tens of thousands of suffering victims could not, in our opinion, wait till these questions, vital though they be, are resolved in the due course of judicial proceedings. The tremendous suffering of thousands of persons compelled us to move into the direction of immediate relief which, we thought, should not be subordinated to the uncertain promises of the law, and when the assessment of fairness of the amount was based on certain factors and assumptions not disputed even by the plaintiff.

A few words in conclusion. A settlement has been recorded upon material and in circumstances which persuaded the Court that it was a just settlement. This is not to say that this Court will shut out any important material and compelling circumstances which might impose a duty on it to exercise the powers of review. Like all other human institutions, this court is human and fallible. What appears to the court to be just and reasonable in that particular context and setting, need not necessarily appear to others in the same way. Which view is right, in the ultimate analysis, is to be judged by what it does to relieve the undeserved suffering of thousands of innocent citizens of this county. As a learned author said:[3]

> In this imperfect legal setting we expect judges to clear their endless dockets, uphold the Rule of Law, and yet not utterly disregard our need for the discretionary justice of Plato's philosopher king. Judges must be sometimes cautious and sometimes bold. Judges must respect both the traditions of the past and the convenience of the present....

But the course of the decisions of courts cannot be reached or altered or determined by agitational pressures. If a decision is wrong, the process of correction must be in a manner recognised by law. Here, many persons and social action groups claim to speak for the victims, quite a few in different voices. The factual allegations on which they rest their approach are conflicting in some areas and it becomes difficult to distinguish truth from false-hood and half-truth, and to distinguish as to who speaks for whom.

However, all of those who invoke the corrective-processes in accordance with law shall be heard and the court will do what the law and the course of justice requires. The matter concerns the interests of a large number of victims of a mass disaster. The Court directed the settlement with the earnest hope that it would do them good and bring them immediate relief, for, tomorrow might be too late for many of them. But the case equally concerns the credibility of, and the public confidence in, the judicial process. If, owing to the pre-settlement procedures being limited to the main contestants in the appeal, the benefit of some contrary or supplemental information or material, having a crucial bearing on the fundamental assumptions basic to the settlement, have been denied to the Court and that, as a result, serious miscarriage of justice, violating the constitutional and legal rights

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3 Wallace Mendelson: *Supreme Court Statecraft—The Rule of Law and Men.*

of the persons affected, has been occasioned, it will be the endeavour of this Court to undo any such injustice. But that, we reiterate, must be by procedures recognised by law. Those who trust this Court will not have cause for despair.

Sd/-

..... CJI
(R.S. Pathak)

..... J
(E.S. Venkataramiah)

..... J
(Ranganath Misra)

..... J
(M.N. Venkatachaliah)

..... J
(N.D. Ojha)

New Delhi,
Dated : 4.5.1989