

# COURT OF DISTRICT JUDGE, BHOPAL

(Presided by Mr. M.W. Deo)

GAS CLAIM CASE NO. 1113 OF 1986

UNION OF INDIA

(Plaintiff)

Versus

UNION CARBIDE CORPORATION

(Defendant)

## ORDER

This is an application by the defendant Union Carbide for particulars from the plaintiff under Order VI, Rules 4 and 5 of the Code of Civil Procedure.

2. Order VI of the Code of Civil Procedure deals with pleading in general. Rule 2 of this Order states that pleadings shall contain, and contain only, a statement in a concise form of the material facts.....but not evidence by which they are to be proved.

3. Rule 4 specifies certain special types of cases demanding particulars and then states that in all other cases in which particulars may be necessary beyond the forms and pleadings provided in Appendix-A they shall be stated.

This pleadings should contain and contain only a statement of material facts. Evidence is not to be pleaded. At the same time particulars, if necessary, should be stated. Mulla on the Code of Civil Procedure 14th Edn., 1984, at page 982, states as follows :—

Particulars supplement pleadings which would otherwise be too vague and general, and ensure a fair trial by giving notice of the case intended to be set-up. What particulars are to be stated, must depend upon the facts of each case. As a general rule, it may be stated that as much certainty and particularity must be insisted on.....as is reasonable, having regard to the circumstances and nature of the acts themselves.....to insist upon more would be to relax old and intelligible principles. To insist upon more would be vainest pedantry. At the same time the distinction between particulars in evidence must be steadily kept in view. *The Courts have uniformly endeavoured to prevent the plaintiff, or the defendant, as the case may be, from prying into the brief of his opponent for finding out what is to be the evidence which is to be produced at the trial.* (Underlining provided).

5. In short, to use the phraseology of Rule 2 of Order VI, particulars will be ordered of the material facts on which the party pleading relies for his claim or defence but not that by which those facts are to be proved.

6. Thus the law of procedure as to pleadings and particulars has been well settled as stated above by Mulla as extracted from English and Indian case-law and as put in terms of Order VI, Rules 2,4 and 5 of C.P.C. There is no quarrel about these settled principles and the present petition has to be disposed of in the light of these principles.

7. The prayer of the defendant is about a very large number of items which took the parties almost full two days to argue. In this matter also, this case appears to be unprecedented.

8. The petition can be taken for consideration of the paragraphs of the plaint mentioned in the petition *in-seriatim*.

9. In para 3, the particulars are sought relating to para 3 of the plaint seeking precise statement regarding vague phrase, "Multi National Corporation" in describing the defendant. This is not necessary in view of the fact that Volume I and Annexure-I of the reply of the plaintiff to the counter-claim of the defendant shows that the defendant itself has used this description for itself.

10. As regards particulars relating to para no. 9 of the plaint, the defendant seeks particulars of the expenditures made by the instrumentalities mentioned in it. The plaintiff is ordered to supply the names and descriptions of the instrumentalities and broadly expenditure incurred by them under various heads.

11. As regards particulars about para 10 of the plaint, the facts asked by the defendant are already in its knowledge regarding design, construction, ownership, operation, management and control of the Bhopal plant. The allegations relating to the nature of relationship between the UCC and the UCIL has been stated in this paragraph by stating the later as subsidiary of the former. It was brought to the notice of the Court that further allegations in this regard have been made in the reply of the plaintiff to the counter-claim of the defendant. To make a convenient reading of plaint allegations, the plaintiff is ordered to supply those allegations in this para. Other particulars regarding para no. 10 of the point are not necessary.

12. As regards para 10 it was argued for the defendant that the plaintiff should clearly show relationship between the UCC and UCIL so that as to what extent the acts of one are the acts of the other can be precisely spelt out. It does not require to be repeated as the plaintiff has already been directed to furnish material allegations in para 10 as stated above.

13. As regards paras 12 and 13 of the plaint, the description, "ultra-hazardous" is in the knowledge of the defendant and the sources and the contaminants are also in the knowledge of the defendant in as much as reading of para 16 of reply of the plaintiff to the counter-claim of the defendant shows that it has copiously quoted the defendant itself in this regard. Again the matter falls within the ambit of evidence of scientific and technical nature as distinguished from the pleadings. This need not be supplied in pleadings.

14. As regards para 14 of the plaint, it is ordered that the plaintiff should supply the particulars relating to alleged, "undertaking" and should clearly mention whether such an "undertaking" was given separately by the UCC and UCIL.

15. As regards paras 15 and 30 of the plaint, the plaintiff should supply

particulars about the "warranty" by stating whether it was oral or in writing and if in writing, the particulars of writing.

16. As regards para 16 of the plaint, the facts must be in the knowledge of the defendant and need not be supplied as particulars by the plaintiff.

17. As regards para 17, the plaintiff is directed to supply particulars about, "Representation" as asked for by the defendant.

18. As regards para 19 of the plaint, the defendant has torn groups of words out of the context and is asking particulars which are not necessary to form full and concise pleadings.

19. As regards para no. 21, the plaintiff is directed to supply the particulars asked by the defendant. It was said for the plaintiff that they are contained in Annexures filed with the reply to the counter-claim. But to make the reading of the plaint wholesome, the plaintiff is directed to supply the particulars by way of pleadings.

20. It is ordered that the plaintiff shall state the allegations of acts of UCC as distinct from the UCIL or the nature of the relationship between the two regarding the Acts of each other. Other particulars are not necessary as they are in nature of evidence and are presumed to be in the knowledge of the defendant.

21. As regards paras 25 and 27, the plaintiff has already alleged acts and omissions in items (a) to (h) in para 25 of the plaint. The expression, "by way of example and not limitation" appears to have been used by way of abundant caution to enable the plaintiff to make further allegation in relation to duties and its breach if they were to come to be known later on. No further particulars in this regard are called for.

The plaintiff will, however, supply particulars mentioned in items (ii), (iv), (v), (xi) and (xxii). Rest of the particulars are not necessary.

22. As regards para 28 of the plaint, no further particulars from the plaintiff are called for as the plaintiff has already alleged negligence in the matter of design and operating the plant.

23. As regards para 30, the plaintiff is directed to furnish particulars about "Warranty" as asked by the defendant.

24. As regards para 32, the plaintiff is directed to furnish particulars about "Representation".

25. As regards para 36 of the plaint, the particulars sought are in the nature of scientific and technical evidence and do not fall within the ambit of pleadings.

26. As regards paras 39, 41 and 42, which relate to particulars of damages, it was said by the defendant that under Order VII, Rule 2, the plaintiff must state at least approximately the amount or value of the claim if it cannot state a precise sum certain. The learned counsel for the plaintiff submitted that Directorate of claims appointed under the administrative orders by the State of M.P., is processing claim forms which are in lacs. The government is working hard. The plaintiff has supplied particulars of the names, age, sex addresses etc. of these claimants computerised in 57 volumes and it will yet take some time to process the claims and state the value of the claim in suit.

27. Now under section 3 of the Bhopal Gas Leak Act, the plaintiff has filed this suit as a statutory representative of all the claimants and for and on their behalf. Even the claims relating to loss of property and expenditure incurred by the state

government local bodies and other instrumentalities are also to be prosecuted by the plaintiff alone under section 3. The plaintiff should, therefore, state approximately value of the total claims under various heads.

28. The plaintiff is ordered to furnish particulars as indicated above, by way of amendment of the plaint so that the particulars shall be incorporated in and form part of the plaint and shall be in the nature of pleadings. Plaintiff shall do this within a month.

Dated : 23.7.1987

Sd/-  
(M.W. Deo)  
District Judge  
Bhopal