

COURT OF DISTRICT JUDGE, BHOPAL

REGULAR SUIT NO. 1113 OF 1986

UNION OF INDIA

(Plaintiff)

Versus

UNION CARBIDE CORPORATION

(Defendant)

**SUBMISSION ON BEHALF OF THE DEFENDANT PURSUANT TO THE
PROPOSAL OF THE COURT DATED APRIL 2, 1987**

1. This honourable Court has handed over to the parties on the afternoon of April 2, 1987, "a proposal for reconciliatory substantial interim relief to the gas victims." At the hearing of IA 12 (application for particulars) on July 21 and 22, 1987 the Court requested both parties to respond to the Court's proposal at the next hearing.

2. It is submitted at the outset that this honourable Court has no inherent power nor jurisdiction to pass an order of reconciliatory interim relief. It is further submitted that no order can be passed on any such proposal except to the extent specifically agreed to by the parties. The rest of the submissions are without prejudice to the foregoing.

3. The defendant denies that it is liable for the claims of the plaintiff and denies that the Court could, on the facts or in law, order any interim relief. However, that the defendant is not liable and that the Court has neither the inherent power nor jurisdiction to order interim relief does not inhibit the defendant from responding to the Court's initiative as a proposal on humanitarian grounds.

4. Before doing so, however, the defendant wishes to point out the following important facts :

- a) In the Bhopal Act and the Scheme framed thereunder there are detailed provisions relating to inviting, filing, receiving, scrutinizing, processing, categorizing and registering claims. At the hearing on July 21 and 22, the counsel for the Union of India, expressly stated that the provisions of the relevant paragraphs of the statutory scheme had not been implemented and that no notification had been issued by the commissioner inviting claims as prescribed therein. The scheme envisages that claims would be invited by the commissioner by notification in the prescribed statutory form—separate claim forms are required in respect of each category of claim specified in paragraph 5 of the Scheme such as death, total disablement, permanent partial disablement, temporary partial disablement, temporary dislocation of means of livelihood, claims in respect of injuries likely to

be suffered etc. These claims ought to have been invited before December, 1985. However, it now transpires that no such claims have been invited despite the provisions in the statutory Scheme and despite the provisions therein made for categorisation and registration of the claims of each claimant. It is because of the default of the statutory authorities appointed under the Scheme that up to now there has been no processing of the claims as contemplated by the Scheme. Besides, at the hearing of IA 12, the counsel for the plaintiff submitted that the directorate of claims appointed under the administrative orders of the State of Madhya Pradesh (but not under the Scheme) had been processing claim forms (though not under the Scheme) and the directorate was ascertaining the genuineness of the claims and that the processing of these claims would take a long time. In view of the grossly exaggerated and/or false claims that have been widely reported and are common knowledge and in the absence of the statutory procedure required to be followed under the scheme not having been observed even though two years have elapsed since the promulgation of the Scheme, there obviously is no credible information about the nature, category, or genuineness of the claims which have been received nor even any genuine approximate evaluation about the extent of the damage or injury caused to the alleged claimants. Any exercise of the nature envisaged under the proposal is therefore impossible.

- b) The state government and local authorities have repeatedly proclaimed that all needed relief and rehabilitation has been and is being provided to the people affected and that the best possible medical care has been provided and full assistance arranged for rehabilitation of the affected people. The Madhya Pradesh Government has officially stated that there has been "no financial constraint in the matter of providing relief and rehabilitation to the affected population". It has further alleged in an official publication issued on December 3, 1986 that :

The Madhya Pradesh Government have done everything within their power to help the people in distress. The best possible medical care has been provided and full-scale assistance arranged for the rehabilitation of the affected people.

- c) Adequate information as to who and how many people may still be in need of specific forms of assistance, whether rehabilitative or other similar relief, has not been supplied by the Union of India and the State of Madhya Pradesh to the court or the defendant.

5. The foregoing hampers the formulation of specific proposals for any further immediate relief that may be actually required. Besides, there is no material before the Court as to the present health status of the various claimants.

6. In order to demonstrate the defendant's good faith and commitment to humanitarian rehabilitative relief for the Bhopal victims the defendant states:

- a) Since December 1984 the defendant, Union Carbide Corporation and the Indian company, Union Carbide India Limited (UCIL), have made prompt and sincere offers to provide aid and relief to the victims of the tragedy,

which the central and state governments have not accepted. Moreover, funds which have been made available have not been utilized. For example, Union Carbide Corporation gave \$5 million for emergency humanitarian relief which was paid to the American Red Cross as far back as December 1985. Until now only \$2 million has been requested by the Indian Red Cross which amount has also not been fully spent. The additional \$3 million remains with the American Red Cross in Washington and is available to provide additional relief which may be necessary.

- b) In December 1984 rupees one crore was tendered unconditionally by UCIL to the state government which was not accepted. When in January 1986 an offer was made to fund the construction of a hospital for treatment of gas victims, the amounts being contributed by Union Carbide Corporation and UCIL in equal proportion, this offer too was not accepted. But all this was in the past. The Court's proposal has been made on humanitarian grounds and the defendant responds by offering the following for immediate rehabilitation of the victims who may be in need of such rehabilitation, including vocational training, namely :
- (i) To bring into and deposit in Court the proceeds of the dividends declared since the year of the tragedy in respect of the entire shareholding of Union Carbide Corporation in UCIL. This will be over Rupees 21,000,000 (Twenty-one million). The necessary application to the Reserve Bank for this purpose will be made forthwith.
- (ii) To authorise the American Red Cross in Washington DC to remit forthwith to this honourable Court all moneys which continue to be held by it (out of US \$ 5 million paid by Union Carbide Corporation in December, 1985) which is expected to be approximately Rupees 39,000,000/- (Thirty-nine million).

The defendant further offers :

Immediately to meet with the representatives of the state and central governments to define the real present needs of the Bhopal victims and then together to address themselves to the most appropriate manner of meeting those needs.

If such needs are established and relevant information made available the defendant would be willing, for example as may be agreed upon with the plaintiffs:

- i) to provide, operate and maintain at its own cost, a suitable and appropriate rehabilitation facility;
- ii) to provide, at its own cost, expert consultation to ascertain the rehabilitative needs of any seriously affected victims; and
- iii) to discuss with the central and state governments the immediate need for any further programmes.

8. Finally, it is submitted that there is a more effective and complete means of avoiding "the jungle of laws and legal battles", referred to in the Court's proposal—by an overall settlement of all the claims as already proposed by Union Carbide Corporation without admitting liability.

Dated : August 17, 1987.

Advocate for the Defendant