COURT OF DISTRICT JUDGE, BHOPAL

GAS CLAIM CASE NO. 1113 OF 1986

UNION OF INDIA

(Plaintiff)

Versus

UNION CARBIDE CORPORATION

(Defendant)

Interveners :

1) Zahreeli Gas Kand Sangharsh Morcha, and
2) Jana Swasthya Kendra

WRITTEN SUBMISSIONS ON BEHALF OF INTERVENERS WITH REGARD TO INTERIM RELIEF TO GAS VICTIMS

(1) It is an irony that three years after the disaster, we are, for the first time, seriously pondering over grant of interim relief to the victims of the holocaust and are relying on the decision of the hon'ble Supreme Court in *Shri Ram Fertilizer's case*, whereas their lordships of the Supreme Court had very much in mind the Bhopal case when they took upon themselves to lay down a law in this regard :—

> Writ petition No. 12739 of 1985 which has been brought by way of public interest litigation raises some seminal questions...., the principles and norms for determining the liability of large enterprises engaged in manufacture and sale of hazardous products, the basis on which damages in case of such liability should be quantified and whether such large enterprises should be allowed to continue to function in thickly populated areas and if they are permitted so to function, what measures must be taken for the purpose of reducing to a minimum the hazard to the workmen and the community living in the neighbourhood. *These questions which have been raised by the petitioners are questions of the greatest importance particularly since, following upon the leakage of MIC Gas from the Union Carbide plant in Bhopal, lawyers, judges and jurists are considerably exercised as to what controls, whether by way of relocation or by way of installation of adequate safety devices, need to be imposed on corporations*

[The annexures have been excluded however where document has been included the corresponding page of this volume has been provided *Ed.*]

employing hazardous technology and producing toxic or dangerous substances and if any liquid or gas escapes which is injurious to the workmen and the people living in the surrounding areas, on account of negligence or otherwise, what is the extent of liability of such Corporations and what remedies can be devised for enforcing such liability with a view to securing payment of damages to the persons affected by such leakage of liquid or gas.....
(AIR 1987 S.C. para 1 at page 966) (Emphasis supplied).

(2) It is a matter of grave concern as to why the Union of India, acting as parens patriae, never thought it proper to move the Court for grant of interim relief to the victims? In fact, it were the interveners who, acting in public interest moved the Court under section 94 and section 151 of the code civil procedure on 27.11.1986 praying for the grant of interim relief* in order to doing minimal justice to the victims. Curiously the plaintiff never responded to the prayer which was strongly opposed by the defendant and understandably so. Thereafter this hon'ble court on its own made a proposal to the parties on 2.4.87 which never got a positive response. Then, a division bench of the hon'ble High Court of M.P. in its order dated 3.12.1987 in M.C.C.704 of 1987, having been moved by the plight of the victims, was pleased to direct this hon'ble Court "to examine what interim relief can be granted to ameliorate the conditions of the victims and minimise the human sufferings....."**

(3) It is, however, a matter of great satisfaction, that the interveners, in their role of assisting the court in public interest, have been able to wake up the plaintiff out of its deep slumber and the Union of India, realizing ultimately its constitutional duty towards the victims and towards the cause of justice, has gone all out to support the cause of the victims for grant of interim relief by an order of Court.

(4) The interveners while fully supporting, endorsing and adopting the arguments advanced by the learned Attorney General of India on behalf of the plaintiff on the legal questions involved on the point would like to supplement them with a few more points viz :—

(i) **Prima Facie Liability of Defendant**

(a) The defendant in paragraph 45 of the written statement in their reply to para 4 of the plaint have admitted that "as a result of MIC being emitted from the MIC storage tank (tank 610) at the Bhopal plant, a terrible disaster resulted and affected many persons."

(b) In paragraph 70 of the written statement in sub-paragraphs (a) to (g) the defendant has boasted of the measures allegedly taken by it to provide relief to the gas victims. While disputing the averments, it is submitted that the defendant took the steps and made the offers as alleged owning its moral and legal liability for the disaster. The defendant would not have done the same in respect of any gas leakage in any other plant (e.g.) Shri Ram Fertilizers at Delhi) which did not belong to it. The then Chairman of the defendant Corporation, Warren Anderson, came down to Bhopal to

*See *supra* at 235.

**See *infra* Part III.

personally observe the effects of the gas leakage and offered an insignificant amount as compensation to the victims. The scientific, technological and medical experts of the defendant Corporation conducted tests and experiments into the effect of the disaster and also funded, as alleged by the defendant, certain agencies to conduct such tests and report to them. After the terrible disaster, which was not short of genocide, the experts of the defendant Corporation visited the Bhopal plant, conducted tests and experiments and interviewed various people and thereafter the defendant published a 24 page report in March, 1985 entitled : BHOPAL METHYL ISOCYNATE INCIDENT INVESTIGATION TEAM REPORT in order to create a defence for itself. If the defendants were not prima-facie liable for the disaster, they would not have taken all these troubles :

(c) In reply to plaintiff's application for grant of interim injuction, the defendant in the affidavit of John Macdonald, dated 14th November, 1986 in paragraph 25 have stated.

> Union Carbide Corporation.....offered $100 million over the amount of its insurance coverage of $200 million in full and final settlement of all claims arising out of the Bhopal incident. It was then suggested that the amount should be raised and the defendant agreed to seek authority from its Board for an additional $50 million to be paid by the Union Carbide Corporation....

Here it is important to note, and which has escaped the notice of all concerned *so far that the Union Carbide Corporation did offer to pay as compensation the amount of $200 million against its insurance cover for the disaster. It is pertinent to note that no insurance company would be willing to cover the insured's risk unless the particular risk is covered under the insurance policy. It goes on to prove, prima facie, that any liability arising out of the Bhopal plant is covered under the insurance cover of the defendant Union Carbide Corporation and, therefore, they are now estopped from saying that the Bhopal plant does not belong to them.* (emphasis added).

(d) In the landmark judgement in Shriram Fertilizer's case, AIR 1987 SC 1086, in para 31 at page 1099 their Lordships have observed :

> We are of the view that an enterprise which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, *the enterprise must be absolutely liable to compensate for such harm and it should*

be no answer to the enterprise to say that it had taken all reasonable care and that the harm occured without any negligence on its part... We would therefore hold that...the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule of Rylands V. Fletcher." (emphasis supplied).

(ii) **Power of Court to Grant Relief**

(a) In paragraph No. 99 of the written statement the defendant has admitted the jurisdiction of this hon'ble Court to try the suit "Whilst not denying at all the jurisdiction of this hon'ble Court to entertain the suit." The defendant cannot now challenge the jurisdiction of the Court in respect of any matter incidental to the trial of the suit.

(b) Under section 151 read with section 94 of the Civil Procedure Code, the Court has power to pass any interim order, if it deems fit and absolutely necessary for the ends of justice to do so, in the absence of any provision prohibiting passing of such an interim order. This inherent power of the Court is to be exercised upon its own judicial conscience and not upon the insistence of any party. In other words, the Court has the power to pass an interim order in the exercise of its inherent jurisdiction on its own without having been moved by any party to the suit, as in the instant case. As held by the hon'ble Supreme Court in *(AIR 1962 SC 527 Manoharlal* V. *Seth Hiralal* para 18 at Page 532):—

No party has a right to insist on the Court's exercising that jurisdiction and the Court exercises its inherent jurisdiction only when it considers it absolutely necessary for the ends of justice to do so. It is in the incidence of the exercise of the power of the Court....that the provisions of S.94 of the Code have their effect and not in taking away the right of the Court to exercise its inherent power.

(c) The case is of an extraordinary and unprecedented nature and it demands an extraordinary treatment by the hon'ble Court as well as by the parties concerned. Absence of a direct authority on the question of grant of interim relief in such a case ought not to deter the hon'ble Court from acting upon its judicial conscience. As observed by Martin J. in *Jethabhai* V. *Amarchand* (AIR 1924 Bom 90 at page 92-93)

Appeals to the inherent jurisdiction of the Court have, I need hardly *say, to be regarded with the grantest caution. But, if after exercising such caution the Court is clearly of opinion that the jurisdiction ought to be exercised, I do not think it should be intimidated from so doing, because no case on all FOURS IS FORTHCOMING from the reported decisions of the various High Courts. (emphasis supplied.).*

(d) A Special Bench of the Bombay High Court consisting of Beaumont

C.J. Blackwell and Rangnekar JJ. in *P. D. Shamdassni* V. *Central Bank* (AIR 1938 Bom. 199 at page 205) observed :—

> The basis of inherent jurisdiction is that there should be no miscarriage of justice. The Code of Civil procedure is not exhaustive, and it is for that purpose that the legislature, by section 151, indicated that the Court has an inherent power to act *ex-debito justitia* in order that real and substantial justice may be done. As the Privy Council have pointed out in 48 IA 76 (AIR 1921 P.C. 80), where circumstances require it, the Court will act *ex debito justitia* to do the real and substantial justice for the administration of which alone it exists....Rules of procedure are meant to secure the ends of justice and not to override them....

(e) In *D. Udayar* V. *Rajarani (AIR 1973 Mad 369) the head note says* :—

> Bearing the general principles in view, namely the acts of Court including its delays ought not to prejudice and cause hardship to any party, the power to make an interim order is implicit, ancillary and a necessary corollary of the power to entertain a suit and pass final orders therein.

(f) In *Indar Mal* V. *Bavulal*, (AIR 1977 Raj 10) the same principle is enunciated and elaborated :—

> 17. Whether a Court can grant interim maintenance to a minor son *when his very status as such has been challenged*, especially when such an order for interim relief is not an act in aid of the suit....
> 18. If there is no provision of law remitting the Court to grant interim maintenance, then whether the power to grant interim maintenance can be invoked under its inherent powers...
> 19. Grant of maintenance allowance is always aimed at preserving the existence of an individual who is supposed to be not in a position to support himself. Though, there is no express provision of law... for grant of interim maintenance allowance, yet there is no prohibition against such an interim relief being granted.....
> 20. [I] have no hesitation in holding that the Court has inherent powers to grant interim maintanence in suitable cases. *The grant of such interm relief does not in any way prejudice the substantial rights of the parties. To hold otherwise would mean that the very purpose of the suit might be frustrated as the plaintiff petitioner might not be able to sustain the proceedings due to want of means*.....(emphasis supplied.)

(g) Their lordships of the Supreme Court while dealing with a case under the Motor Vehicles Act, extensively dealt with the provisions of Fatal Accidents Act, 1853 and made certain observations while upholding section 92-A of the Motor Vehicle Act. The principles underlying these observations can be, and ought, to be, logically extended to and applied in the present case,

being a case of similar nature, while considering the question of interim relief. In *Gujarat SRTC* V. *Remanbhai* (AIR 1987 S.C. 1690 in para 8 at page 1697) their lordship observe :—

> When the Fatal Accidents Act, 1855 was enacted there were no motor vehicles on the roads in India. Today, thanks to the modern civilization, thousands of motor vehicles are put on the road and the largest number of injuries and deaths are taking place on the roads on account of the motor vehicles accidents. In view of the fast and constantly increasing volume of traffic, the motor vehicles upon the roads may be regarded to some extent as coming within the principle of liability defined in Rylands Vs. Fletcher.....where a pedestrian without neglience on his part is injured or killed by a motorist whether negligently or not, he or his legal representatives as the case may be should be entitled to recover damages if the principle of social justice should have any meaning at all. In order to meet to some extent the responsibility of society to the deaths and injuries caused in road accidents there has been a continuous agitation throughout the world to make the liability for damages arising out of motor vehicles accidents as a liability without fault. In order to meet the above social demand on the recommendation of the Indian Law Commission chapter VII A was introduced in the Act....This part of the Act is clearly a departure from the usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for death or permanent disablement caused on account of motor vehicle accident. To that extent the substantive law of the country stands modified.

(iii) **The Bhopal Act and Scheme**

(a) The purpose behind the enactment of the Bhopal Act is two-fold:—

1. To authorise and empower the Union of India to file appropriate consolidated claim against the Union Carbide Corporation and to realize compensation, and
2. To chalk out the procedure whereby each one of the individual claimant has to be paid out of the consolidated compensation:

The first part relates to the institution and prosecution of claim between the Union of India and the UCC, whereas the second part regulates the relationship between the Union of India and the individual claimant, in which the UCC does not come into the picture at all.

(b) Section 3 of the Bhopal Act clearly and unequivocally authorises the Central Government to represent and act in place of every person who has made or is *entitled to make a claim.* The true interpretation of the expression "is entitled to make a claim" occuring in section 3(1) of the Act is that for claiming and obtaining relief from Court, it is not a pre-requisite that each one of the victim has already made a claim or that

such claim has been processed by the Commissioner. The scheme framed under section 9 of the Act cannot override the Act itself. As such the contention that the grant of any relief in the suit filed under the Act has to be preceded by processing of claims under the scheme has no merit.

(c) Para No. 10 of the Bhopal Scheme provides for maintenance and distribution of funds for relief purposes, sub-para (3) (b) of para 10 of the scheme makes provision for disbursal of amounts as relief, including interim relief to the victims, and sub-para 3 (c) thereof provides for disbursal of amounts for the *social and economic rehabilitation* of the victims. The term 'interim relief' occurring here logically includes, and does not exclude, interim relief awarded in the suit, which would be clear from a reading of sub-para 3 of para 11 which reads as follows:

(3) The Deputy Commissioner shall determine the quantum of compensation payable to each claimant within a category specified in paragraph 5 in accordance with the provisions of sub-paragraph (4) *subject to any Court order*, settlement or award of damages in any specific case.

The determination of quantum of compensation has to be made subject to any court order in any specific case. That shows that determination and payment of compensation, including interim compensation, to the victims subject to court order has been contemplated in the scheme and a machinery to undertake the task in the event of any award of such compensation by way of interim relief has already been provided for in the scheme. As soon as the award is made the machinery under the Commissioner would come into action.

(iv) **Relief by Government**

(a) The relief provided by the Govt. so far is minimal and insignificant. Whatever may be the inflated claims of the government both Central and State, in their publicity stunt, the fact is that the relief measures undertaken by them are almost zero. Such measures have totally failed to ameliorate the sufferings of the victims to any notable extent. Even if the claim of the state government having spent an amount of Rs. 60 crores in the past 3 years is taken at its face value, the amount is negligible. As per the government, there are more than 5 lakhs victims of the gas disaster. If the amount of Rs. 60 Crores is divided by 5 lakhs and further divided by 1100 (days in 3 years), the amount would come to rupee one per-victim per-day which is a mockery of relief. While deciding the question of grant of interim relief in the suit, the relief provided so far by the government has to be ignored. Moreover, the government's assertion of providing all possible relief cannot constitute a defence for the Union Carbide to escape its liability to compensate the victims. Further, the government's assertion of providing "all possible relief" is not the same as providing "all necessery and sufficient interim relief" to the victims. Obviously, whilst ordering payment of interim relief, the court has to consider the pressing necessities of the victims and the amount sufficient to cover the same, i.e. an interim relief which is necessary and

sufficent

(b) The assertion of the defendant that since the plaintiff refused certain offers, by way of "humanitarian" measure, made by the defendant, the victims do not really need any relief, is nothing short of being absurd. The government did the right thing in refusing any 'donations' from the Union Carbide, which any sovereign nation ought to have done. After all we are not beggars. We are not begging for "humanitarian aid" from the killers of our brothers and sisters and the destroyers of many happy homes. We are fighting for our right to be compensated by the multinational Corporation for the damages caused by it. We are fighting to make the multinational realize that human life is not a thing to be dealt with so casually, negligently and cheaply. We are fighting to make them understand that life of an Indian is no less precious than that of an American and that we are not prepared to be treated as beasts or objects for chemical experiments any more. The money made through profits earned over the corpses of scores of innocent people and at the cost of life-long suffering and ailment of thousands of others is in fact 'dirty money' and we would never be prepared to accept such money unless it comes as punitive damages to the victims.

(c) Whatever the government has spent, and is spending on basic relief measures for the victims is the tax-payer's money which ought to have been utilized in developmental projects but for the disaster caused by the UCC. The UCC is liable to account for all the amounts being spent in providing relief to the victims of the disaster caused by it. The talk of offering any aid to the victims out of a "humanitarian consideration" sounds like an abuse of the word 'humanitarian' itself.

(d) The defendant's contention that the plaintiff intentionally did not choose to apply for interim relief, and rightly so, since there is no ground for it is not correct. The fact appears to be that the plaintiff from the very beginning—and the defendant too—was never interested in being engaged in open legal battle over the issue. The plaintiff's concern and attempt throughout has been to reach an out of Court settlement with the defendant compromising the rights of the victims. So much so that the Bhopal Act in section 3 Sub-section (2) (b) especially authorizes the plaintiff for entering into a compromise' with the defendant without taking the consent of the victims. It was on virtually being forced to take a stand on the question of interim relief, and with the threat of public exposure and criticism, that the plaintiff did take a positive stand on the issue. Ironically, what the plaintiff ought to have done in the suit was attempted by the powerless poor interveners. It is no surprise that only at one point, throughout the discussion on the issue, both the plaintiff and the defendant were in total agreement—that the interveners should not be allowed to be heard in the matter!

(v) **Public Interest Litigation**

(a) Order 1 Rule 8A has been inserted in the Code of Civil Procedure by the 1976 amendments. The intention of the legislature has been to legally provide for the participation of voluntary organizations, as the present interveners,in suits involving matters of public interest, as the present suit. It has in

introduced a useful provision as obtains in the U.S.S.R. permitting the joinder of voluntary organizations interested and involved in the legal issues in a suit to present their opinion before the court and take part in the proceedings in the suit. This is intended to enable organizations and citizens to take action in defence of the rights and lawful interests of all concerned.

(b) The new provision introduced in the Civil Procedure Code under Order 1 Rule 8 A aside, our Supreme Court has "innovated new methods and strategies for the purpose of securing enforcement of fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning". The Supreme Court has also held that "procedure being merely a hand-maiden of justice, it should not stand in the way of access to justice to the weaker section of Indian humanity and therefore where the poor and the disadvantaged are concerned who are victims of an exploited society without any access to justice, this Court will not insist on a regular writ petition and even a letter addressed by a public spirited individual or a social action group acting *pro bono publico* would suffice to ignite the jurisdiction of this Court. We wholly endorse this statement of the law in regard to the broadening of locus standi and what has come to be known as "epistolary jurisdiction."

(c) Their Lordships of the Supreme Court have further observed that the Courts should not insist on affidavits:

> If the Court were to insist on an affidavit as a condition of entertaining the letters the entire object and purpose of epistolary jurisdiction would be frustrated because most of the poor and disadvantaged persons will then not be able to have easy access to the Court and even the social action groups will find it difficult to approach the Court.

(d) Appreciating the role and importance of public interest litigation, their Lordships in (AIR 1987 SC 965 in para 24 at page 982) observed :—

> Before we part with this judgement we would like to express our deep sense of appreciation for the bold initiative taken by the petitioner in bringing this public interest litigation before the Court. The petitioner has rendered signal service to the community by this public interest litigation and he has produced befor the Court considerable material bearing on the issues arising in the litigation. He has argued his case with great sincerity and dedication....Though lone and single, he has fought a valiant battle against a giant enterprise and achieved substantial success. We would therefore as a token of our appreciation of the work done by the petitioner direct that a sum of Rs. 10,000 be paid by Shriram to the petitioner by way of costs.

(e) With this background of the evolution of public interest litigation, the insinuation by the defendant that the interveners, if they were really interested in public interest litigation, should have moved the High Court or the

Supreme Court for issuance of notification under para 4 of the Bhopal scheme, is an insult and abuse to the concept of public interest litigation as evolved by the Supreme Court. Instead of suggesting to the interveners, the UCC should have advised the organizations funded by it (as stated in para 70, sub-paras (c) to (g) of the written statement) to move the High Court or the Supreme Court on the matter in order to create a defence for the defendant and attempt to establish that the suit itself is premature. Suffice it is to say, that the interveners being voluntary organizations of the victims, and each one of its members being a victim of the UCC massacre, would refuse to oblige the defendant to create defences against the victims.

(f) The differences in approach, strategy and tactics between the plaintiff and the interveners are aimed at focussing the sufferings of the victims. These differences ought to be there in any democratic society and ought to be resolved within the democratic setup. The interveners feel that they have a right to criticize the government whenever they feel it necessary to do, and vice-versa, but not at the cost of helping the Union Carbide in minimizing its liability. The defendant, in fact, is called upon to describe in detail the monetary help it has provided to varions groups in Bhopal engaged in collecting datas for the Union Carbide under the garb of providing "humanitarian relief" to the victims.

(vi) **Quantum of Interim Relief**

(a) Their Lordship of the Supreme Court in *M.C. Mehta* V. *Union of India* (AIR 1987 SC 1086 in para 32 at page 1099) held:

> We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the *magnitude and capacity* of the enterprise because such compensation must have a deterrent effect. *The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident* in the carrying on of the hazardous or inherently dangerous activity by the enterprise. (emphasis supplied).

(b) In the affidavit dated 14.11.86 of John Macdonald of the UCC, in reply to plaintiff's application for interim injunction, in sub-paras (a) and (b)of para 6, it is stated.

> (a) Union Carbide Corporation is a financially sound corporation. It has more than 6.5 billion dollars, i.e., Rs. 8,515 Crores of unencumbered assets...(b) Union Carbide Corporation has 200 million dollars i.e., Rs. 262 crores of liability insurance.

(c) The amount of interim relief has to be fixed taking into consideration the assets and insurance cover of the Union Carbide Corporation. So also the amount claimed in the suit by the plaintiff has to be considered, although

the claim of the government is much below the actual damage caused by the defendant. Even if one fourth of the amount claimed in the suit is granted by way of interim relief, such amount would come to about Rs. 1,000 crores (rupees One thousand crores) which is about one tenth of the unencumbered assets of the defendant, as per their version, and would not cause undue hardship to the defendant.

(d) For deciding the quantum of interim relief, the interveners beg to rely on the estimation of damages at 4,066 billions, i.e., 5,250 crores of rupees prepared by a United States-based organization. The Council on International and public Affairs, which is annexed hereto* and pray that interim relief to the victims be awarded accordingly.

(VIBHUTI JHA)
ADVOCATE
Counsel for the Interveners.

Bhopal.
Dated : 12.12.1987.

* The annexure has been excluded. *Ed.*