IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 8717 OF 1988

UNION CARBIDE CORPORATION

(Petitioner)

Versus

UNION OF INDIA

(Respondent)

COUNTER AFFIDAVIT ON BEHALF OF UNION OF INDIA

I, Shyamal Ghosh, son of Late B.G. Ghosh, aged 46 years, belong to the Indian Administrative Service. I am presently functioning as Joint Secretary in the Department of Chemicals & Petro-chemicals, Ministry of Industry, Government of India, New Delhi. I do hereby solemnly affirm and state as under:

I. The present reply to the special leave petition is being filed by the Union of India. I am persuing this case on behalf of Union of India. I am, therefore, conversant with the facts of the case. As such, I am competent to swear this affidavit.

II I have read a copy of the special leave petition filed by the Union Carbide Corporation and have understood its contents. I deny all the allegations made therein all and singular except those which are specifically admitted hereunder.

1. That the petitioner has not come with clean hands. It has not only misstated the facts but has also suppressed many facts so as to give a one-sided picture of the case with a view to gain unfair advantage.

2. That the order in revision before the High Court of Madhya Pradesh, Jabalpur was passed by the District Judge, Bhopal on 17th December, 1987. The revision was filed by the petitioner (UCÇ) in the High Court of Madhya Pradesh, Jabalpur, on or about 18th January, 1988 and the oral arguments were concluded on 19th February, 1988. The judgment and order were pronounced and passed by the High Court on 4.4.1988. Thereafter, a review petition was filed against the said judgment and order in the High Court of Madhya Pradesh, Jabalpur on 2nd May, 1988. The said review petition, registered as M.C.C. No. 172/88 came up for motion hearing on 24th June, 1988 and for further motion hearing on 22nd July, 1988 in the presence of both the parties. On neither of those two dates, the petitioner disclosed to the Hon'ble Judge of the High Court of Madhya Pradesh, Jabalpur, hearing the said review petition that it has filed a Petition for Special Leave to appeal against the order passed by the District Judge, Bhopal (dated

17.12.87) and confirmed with slight modifications by the High Court. Thus, a very material fact was suppressed by the petitioner from the High Court.

3. That it was never contended by the respondent before the Hon'ble the High Court during the course of arguments, orally or in writing, that revision u/s. 115 of the Code of Civil Procedure was not maintainable. It is a untrue statement. It was urged, inter alia, that no grounds exist for interference u/s. 115 of the Code of Civil Procedure. Not a word was uttered before the High Court regarding maintainability of the revision and the petitioner never sought a direct answer to the said point from the High Court. As such the question of filing an S.L.P. against the order of the District Judge did not arise.

4. As the petitioner states, if the order passed by the District Judge, Bhopal was not revisable on the ground that no revision lies against it, the petitioner should have elected before the High Court whether to pursue the remedy under S. 115, CPC, or to withdraw the revision and to pursue the remedy in this Hon'ble Court.

5. The petitioner has abused the process of law. On meritless grounds, it filed a review petition after long delay and pressed it, and without waiting for the decision of the said review petition, filed the petition under reply. Thus, filing of review petition was unnecessary according to the act of the petitioner yet the same was filed and pressed.

6. The Hon'ble High Court, while hearing arguments at the time of admission of M.C.C. 172/88 had clarified about the "voluminous documents" meaning thereby that it meant that the two documents, that is, the Corporate Policy and Memorandum and Articles of Association were voluminous, yet the same objection, alongwith others, is repeated. Like wise, it was made clear to Hon'ble the High Court on 22nd July, 1988 that about 500 Claim Forms sought to be seen were brought to the Court the next day and Hon'ble the Judge stated that he did not want to go through them. The said fact has also been repeated by the respondent before the District Judge, Bhopal in its rejoinder to the petitioner's reply dated 20.7.88 in I.A. 35. Despite all the said facts, it is a ground in the petition for Special Leave to appeal that no forms were produced before the High Court.

The order of January 23, 1985 was passed within two months of the tragedy. At that time the plaints of the individual plaintiffs would not have been served on the defendant UCC. In any event, there was no written statement or any other material on record. Moreover, the respondent, Union of India, would have been a defendant in some of the suits only and it was also not served with any summons of those suits. The Bhopal Gas Leak Disaster (Processing of Claims) Ordinance was also not in existence at that time. Under the circumstances, there could be no occasion for this respondent to prefer an appeal or take any action against the said order dated 23rd January, 1985 passed by the then District Judge, Bhopal. The petitioner, UCC having known all these facts has deliberately and mischieviously alleged that the said order has become final against the respondent, Union of India, as it did not prefer an appeal against the same. It was in that context that the order was passed. Incidentally, the judge, while passing the order, did not say that he has no power to do so. It is significant that this point was not raised and, therefore, not dealt with in the judgment of the High Court against which the SLP is filed. No ground is taken in the SLP that this argument, though pressed, was nevertheless not dealt with by the High Court. It is also significant

that the petitioner filed a review petition before the High Court for reviewing its judgment, against which judgment the SLP is filed. It was not alleged in that review petition that the High Court has not dealt with this contention nor was it argued when the review petition was heard by the High Court. Under the circumstances having given up the point it could not be now raised again. But when Judge Deo passed the order dated December 17, 1987, the amended plaint of the Government of India, the original written statement of the UCC and the reply of the Union of India as also copies of several documents filed before Judge Keenan were before Judge Deo. The learned judge had also the benefit of the several allegations and counter allegations of the parties in several Interlocutory Applications as also the judgments of U.S. Courts. The learned judge must have been conscious of the delaying tactics of the UCC in not allowing I.A. 24 to be decided. If the UCC was not really liable they should have availed of the opportunity of an issue regarding the liability being framed and disposed of in their favour. The UCC, on the contrary, is not willing. Even in the High Court, while the revision was being heard, it categorically refused to give its consent to a direction by the High Court to the District Judge for framing and disposing of the issues or itself framing issues and deciding them. The submission in the SLP, regarding this aspect is not correctly set out. When the petitioner sought to tender written submission after the respondent had replied to its arguments in the revision, objection was taken on behalf of the respondent that, as the matter had not been argued on merits, no written submissions could be made in rejoinder and that the written submissions should be rejected. The learned judge of the High Court directed that the written submissions should go off the record. The counsel for the petitioner, then withdrew the written submissions and also took back the copy given to the respondent's counsel. When the learned judge of the High Court posted the revision for further hearing, arguments were addressed by both sides as to whether the High Court could give directions to the District Court to try preliminary issues. The learned judge, however, has not passed any orders on this aspect. The submissions made on behalf of the respondent have not been correctly set out in the SLP. It is not the practice to set out what is alleged to have happened in Court and to drag counsel into a controversy and make counsel take the position of a witness. In any event, since the High Court has not ruled on this aspect and the matter is pending in the District Court, all averments made in the SLP are irrelevant. This is only one other instance as to how the petitioner has been attempting in every proceeding to set out untruly matters alleging them to have happened so that if possible it may use such unfounded allegations to support a contention regarding violation of due process, when, in fact, there has never been any such violation in any court. It is a desperate attempt to defeat the legitimate claims of the gas victims.

7. The respondent feeling aggrieved with part of the Order of the Hon'ble High Court, has also filed on 8th July, 1988 a Petition for Special Leave to Appeal in this Hon'ble Court which has been registered as SLP (Civil) No. 8931 of 1988. There is a detailed discussion of facts and the points involved in the said SLP. The respondent craves leave of this Hon'ble Court to refer to it at the time of arguments. Apart from the facts, grounds and documents contained in the said SLP (Civil) No. 8931 of 1988, the respondent briefly submits its reply as under to the present special leave petition:

PARAWISE REPLY

(a) The Annexure-A and A-I are not the final or conclusive documents to show the affected areas. The Gas Leak affected extensive areas and people living therein and the present and recent researches have established more than what was thought to be the effect of the deadly, poisonous gas leak.

(b) The objects and reasons for promulgation of the Bhopal Gas Leak Disaster (Processing of Claims) Ordinance, 1985 are obvious and self-explanatory. The Ordinance was later replaced by an Act. The said Act was made operative retrospectively from the date of promulgation of the Ordinance, that is, 20th February, 1985. The respondent will refer to the Act and the Scheme framed there under at the time of the arguments.

(c) Before the respondent filed a complaint in the U.S. District Court for the Southern District of New York, several complaints for compensation due to Gas Leak were filed in various Federal Courts in U.S.A. by the individual plaintiffs through the American Attoneys. These private complaints were also consolidated into one after the respondent filed the complaint on 8.4.1985. The petitioner is the holding Company and the Union Carbide India Ltd. is the affiliate Company of it, having 50.9% shares of UCIL. The petitioner had and could have control over the UCIL. The UCIL has been using the logo of the petitioner, it is the UCC (Petitioner) that is trying to settle the claims of the plaintiffs in the Connecticut Court, thus admitting its enterprise liability.

It is not correct to suggest that the respondent claimed interim compensation in two suits. No details of the said suits have been given in this para. The copy of order filed as Annexure-Q is also not a true copy of any certified copy of the order and does not given any details as to the Court, names of the parties or the case number. The respondent had no notice of the said petition and was not heard. However, the said order has no effect on the powers of the District Judge, Bhopal to award interim compensation to the gas victims *suo-moto*. There was no need to challenge the said order at that time. The said facts were never raised before the High Court or the District Court and no decision was sought on the said ground.

(d) The petitioner had taken out motion to dismiss the Complaint in the USA on the ground of *Forum Non Conveniens*. The motion was allowed vide order dated 12th May, 1986, subject to the petitioner accepting the three conditions laid down (vide the said order). One month time was given to the petitioner to accept the said three conditions.

The petitioner accepted the said conditions on 12th June, 1986 and the order was entered on 1st July, 1986 and on that day it became final. The petitioner accepted the conditions but later on, appealed against the said order.

(e) The suit (Gas Claim Case No. 1113 of 1986) was thus filed after two months of the order of judge Keenan and not four months, as stated by the petitioner. Primarily the suit is on behalf of the gas victims but the expenses incurred by the respondent, the State of Madhya Pradesh, their instrumentalities and the loss caused to them, are also claimed in the said Suit.

The very fact that the petitioner is contesting the said suit on merits and is also claiming set-off and making a counter-claim against the respondent as well as the State of Madhya Pradesh shows its control over UCIL.

(f) The facts regarding stage of discovery and inspection have been distorted. According to the Code of Civil Procedure, discovery and inspection stage is reached only after the issues are framed. Issues have so far not been framed and the petitioner by adopting usual tactics of delaying the progress of the suit has been successful in delaying the framing of the preliminary or all the issues. The petitioner has been harping upon, again and again, on the discovery being made and inspection being allowed before framing of issues and every time it has been shown on behalf of the respondent that the said stage, according to the Code of Civil Procedure as well as the dictum in *Raj Narain* vs. *Smt. Indira Nehru Gandhi* (AIR 1972 SC 1302) will only come after issues are framed.

As regards the discovery according to the U.S. Federal Rules of Civil Procedure, the said condition was imposed by the U.S. District Judge, Judge Keenan, and the petitioner was denied that privilege because it moved for dismissal of complaint on the ground of forum non conveniens. When the petitioner, after having accepted the aforesaid three conditions, appealed against one of them and sought reversal of the same, the respondent filed a cross-appeal to protect the interests of the gas victims. The appellate Court granted a relief to the petitioner which it has not sought and as such, a writ was filed in the U.S. Supreme Court. The U.S. Appellate Court deleted the Second Codition which was as follows :

> 2. Union Carbide shall agree to satify any judgment against it by an Indian Court, and if applicable, upheld by an appellate Court in that country, where such judgment and affirmance comport with the minimal requirements of due process.

The U.S. Appellate Court deleted the said condition as it felt that any decree passed against the petitioner in favour of the respondent is to be executed under a New York Statute relating to the execution of foreign decree, irrespective of such a condition. These facts have been distorted by the petitioner. The respondent is fully justified in saying that the stage of discovery has not yet reached and it is the petitioner who is not allowing the said stage to be reached.

(g) Needs no reply.

(h) The I.A. No. 14 was filed in accordance with the order of U.S. District Judge Keenan. It was not pursued after the order of the U.S. Appellate Court.

(i) Needs no reply as it is a matter of record.

(j) The respondent did not make any response to the Court's proposal because whatever was within the means of the respondent was done to look after the immediate, pressing needs of the gas victims. The details have been furnished by the petitioner itself in Annexure-D.*

(k) No mutually acceptable settlement was arrived as the parties could not come to any agreement. The averment in the SLP that vocal interests, antagonistic to the settlement, prevented the settlement is not correct. As no settlement was arrived at, the parties so reported to the Court.

(l) Needs no reply.

(m) As regards the applications moved by the interveners, the respondent

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*The annexure has been excluded. *Ed.*

opposed intenvention only because under the Bhopal Act, any gas victim has the right to be associated with the conduct of the suit on permission being granted by the Union of India and not to intervene. As regards the particulars of the nature of injuries, claims, medical treatment, claim forms, it is submitted that it was a continuing process and as such, question of furnishing them did not arise. The names and addresses of the dead as well as of all the claimants were filed in 57 Volumes in the Court much before the application was moved by the interveners. This information was sufficient to enable the Court to grant interim compensation. Identification is to be done by the Commissioner while making payment of the relief. If, after making payment of Interim relief, any amount is left with the Commissioner, he can intimate the Court about it for further directions. The allegations contra in the SLP of the petitioner are made with ulterior motives.

(n) Needs no reply. The claims filed before the Directorate of Claims have been deemed to be filed before the Commissioner, under the Scheme by the amendment to the Scheme. The matter could not be clarified before the District Court because the amendment had not been published by that time.

(o) As regards the Bhopal Act and Scheme, the interpretation of the petitioner is erroneous. The same have been vividly explained and interpreted by the Hon'ble High Court.

The purpose of the amendment to the Scheme framed under the Bhopal Gas Leak (Processing of Claims) Act was to treat the claims already filed with the Directorate of Claims, by the various gas victims, as claims filed before the Commissioner under the Scheme. The amendment was printed in the Gazette of India dated November 19,1987, but was not published till December. It was because of this reason that the amendment was not produced before the District Court. It was produced in the High Court, because, by that time, it was published.

Para Nos. (p) to (r) need no reply as the same are matters of record.

(s) As regards (s) it is submitted that the learned Judge of the High Court has not ignored any decision cited before him.

(t) As regards the allegations in para (t) that the learned High Court Judge "fashioned new law" it is submitted that every Court in India is a Court of justice, equity and good conscience. Where the Indian statute Book is silent and there is no applicable decision of a Superior court, the Court is free to make new law drawing upon all available sources. It can thus be not only eclectic but can also develop suitable, applicable principles. That being so, the learned Judge of the High Court was fully justified in adopting as much of English statute law as he thought was suitable to meet the ends of justice in the case with appropriate modifications. The Bhopal tragedy is unprecendented and such a mass tragedy has nowhere happened in the World. It may be mentioned that the petitioner and its expert witnesses have admitted before the American Court that Indian Courts can be and are innovative.

2. As regards para No. 2, it merely sets out the various questions which according to the petitioner arise for decision in this case.

3. Needs no reply. The events are not stated truly. The events are correctly set out in the S.L.P. (Civil) No. 8931/88 filed by the respondent.

4. As regards para No. 4, the following is submitted:-

(a) to (d) need no reply.

(e) The statement of the Government of Madhya Pradesh (quoted on page 148) is given by the petitioner a distorted interpretation. What is stated therein is that the Governments are doing *everything in their power to help the people* (emphasis supplied) but it is not sufficient and therefore the need for interim relief by way of compensation arises. The Governments are unable to do more because of their various priorities and commitments. The Governments, in the nature of things, can only deal with reliefs which are absolutely necessary even with the best of intentions.

The relief and the aid that the State and Central Governments have given is ex-gratia, designed to mitigate the suffering and hardship of the gas victims, whereas, interim compensation is aimed at giving to the victims, what, in law, justice and equity, is a portion of what is legitimately due to them. It is unfair of the petitioner to seek to take advantage of such ex-gratia relief given to the victims, to escape from its own obligations in law, justice and equity. In fact, it attempted to glorify its conduct during the hearing before the District Court of Bhopal as if it has afforded relief to the victims. They pleaded in their written statement as follows :

> 70. With reference to paragraph 23 of the plaint, the allegations are vague and are denied. The Defendant states that the Defendant did not allow lethal gas to escape from the MIC storage tank at the plant at Bhopal. The defendant denies that the plant at Bhopal was "its plant" as alleged. The plant at Bhopal was constructed, owned, operated and controlled by UCIL. With further reference to the rest of the allegations in paragraph 23 of the plaint, it is relevant to draw attention to the ameliorative, humanitarian measures taken and offers made. Whilst disputing and denying responsibility or liability, both the Defendant and UCIL, have offered aid and relief in numerous forms to the victims of the tragedy, but the Central and State Governments have rebuffed or rejected many of these offers. The Defendant says that it has done the following :
>
> (a) Within a week of the incident, and later in December, 1984, February, 1985 and May 1985, Defendant sent doctors, including internationally recognised specialists with experience in pulmonary medicine and ophthalmology, and arranged for the shipment to Bhopal of testing and rehabilitative equipment.
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> (b) On 10th december, 1984, the Defendant offered one million dollars ($ 1,000,000) to the Prime Minister's Relief Fund for the victims, which was later accepted.
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> (c) In the first half of 1985, the Union Carbide Employees' Bhopal Relief Fund, Inc. collected one hundred and twenty thousand dollars ($120,000) from Defendant's U.S. employees, retirees and former employees, which was distributed to organizations carrying out relief efforts in Bhopal.
>
> (d) On 19th April, 1985, Defendant offered five million dollars ($5,000,000) in humanitarian aid to Bhopal victims. These funds were

not accepted by the Central Government and thereafter the full five million dollars ($5,000,000) was given to the U.S. Red Cross for relief efforts in Bhopal. To date, only two million dollars ($2,000,000) have been utilised by the Indian Red Cross, leaving a balance of three million dollars ($3,000,000) yet to be utilised.

(e) In April, 1985, and January, 1986, the Defendant made a grant of two million two hundred thousand dollars ($2.2 million) to Arizona State University to set up and run the Bhopal Technical and Vocational Training Centre, which has been prevented by the Central Government.

(f) In June, 1985, the Defendant funded visits to the United States by Indian medical experts to come to the United States to attend special meetings on research and treatment for victims exposed to MIC.

(g) In May, 1986, the Defendant donated one million dollars ($1,000,000) to the Swiss based humanitarian organization, Sentinelles, for use for medical, educational and training programmes in Bhopal.

The Defendant is informed by UCIL that UCIL's efforts in ameliorative relief includes the following :

(a) Within a few hours after the incident, UCIL flew medicine and medical equipment into Bhopal.

(b) The Bhopal plant dispensary provided immediate medical aid to more than six thousand (6,000) persons after the incident.

(c) On 4th December, 1985, UCIL's Managing Director met with the Chief Minister of the State Government and made an offer of relief, but this offer was not accepted.

(d) In December, 1984 a cheque drawn in the sum of Rupees one crore to a special relief fund for the gas victims was not accepted by the State Government of Madhya Pradesh.

(e) In December, 1984, UCIL offered to donate a guesthouse or construct a new building for use as an orphanage, but this offer was not accepted by the State Government.

(f) In January 1985, a UCIL employees' sponsored Relief Trust of Bhopal (hereinafter "CESTRUST") which had been collecting funds, provided many forms of relief such as donations of clothing, food, medicines, individual grants and support for a community rebuilding plan. It made a donation of medical equipment. Beginning in February, 1985, CESTRUST developed training programmes, such as an industrial glove making center. CESTRUST also assisted individuals in starting small trading businesses, and provided support and marketing assistance for persons in obtaining training in such skills as typing, driving, television cabinet making, and electrical repairs.

(g) In January, 1985, UCIL volunteered the use of the Bhopal plant's dispensary, as well as the services of the staff, as a center for relief organizations to provide medical services to the community, but this offer was also not accepted by the State Government.

(h) In January, 1985, UCIL offered to establish a Mission hospital to conduct independent research of MIC patients, but this offer was not accepted by the State Government.

(i) In the first quarter of 1985, UCIL offered to purchase a mobile medical van to be operated by the Bhopal Medical College, but this offer was not accepted.

(j) In the first quarter of 1985, UCIL volunteered to assist children, orphaned or otherwise in need of assistance, by funding an orphanage, education grants, or supplies of food and clothing, but this offer was not accepted.

(k) In March of 1985, UCIL offered to set up a job training programme for the gas victims, but this offer was also not accepted by the State Government.

(l) In April of 1985, UCIL offered to establish a special center with a medical section or rehabilitation institution, but this offer was also not accepted by the State Government.

In January, 1986, an offer was made to fund the construction of a Rupees twelve and one half (12.5) crores hospital for the treatment of the gas victims, this amount to be contributed equally by Defendant and UCIL. This offer was not accepted.

The above claim of the petitioner was dealt with as follows :-

(a) The respondent does not know about the truth of the matter and the petitioner was put to strict proof.

(b) Accepted.

(c) The respondent does not know about the truth of the matter and the petitioner was put to strict proof. It was alleged that the amount is insignificant.

(d) The respondent refused to accept the amount as the offer was hedged in by the certain conditions unacceptable to the respondent. Hence, the amount was routed through the Red Cross.

(e) The question of preventing the petitioner by the respondent does not arise if such funds are properly used after obtaining appropriate statutory and administrative approvals.

(f) The respondent does not know about it.

(g) The respondent does not know about it and the petitioner was put to proof. It is further asserted that nothing tangible about use of the amount by the Swiss based organisation for Bhopal victims has been noticed in Bhopal.

As regards so-called ameliorative relief by UCC through UCIL, it is stated as follows :-

(a) The respondent does not know about the truth and the petitioner was put to strict proof.

(b) The UCIL medical authorities at Bhopal were even themselves unaware of the fatal effects of exposure to the M.I.C. If in fact 6000 persons needed immediate relief at the plant dispensary, that is at one dispensary only, the number of injured must be many times 6000 and so the contention of the petitioner that only about 2 to 4 thousand were injured is belied.

(c) The statement being vague the petitioner put to strict proof.

(d), (e) and (j) : The offer was not accepted because of the stigma attached to it and nobody would have ever gone to an orphanage.

(f) The respondent does not know and the petitioner was put to proof.

(g) and (h) : The respondent does not know anything about these matters and put the petitioner to proof.

(i) The offer on only one mobile van for such a ghastly tragedy being insignificant, was not accepted.

(k) and (l) : The statement being vague, the petitoner is put to strict proof.

It may be mentioned that at page 43 of the book "Nothing to Loose But Our Lives" the learned authors have stated that the petitioner is funding medical organisations in Bhopal to fabricate medical evidence to support its case.

(g) It is not correct to state that on 27th November 1987, the petitioner's counsel made any request for discovery and inspection. Even if it is proved to have been made, it was irrelevent as already stated above.

(5) As regards the allegations in para No. 5(I), it is submitted that the petitioner, as usual, is making a mischievious statement that the respondent "has been deliberately" with-holding information from the Court. Whatever infomation was available was placed before the Court and as regards other matters, it was explained to the Court as to why such information could not be placed. The trial court as well as Hon'ble High Court have accepted the explanation of the respondent in view of the enormity of the tragedy.

It was submitted to the High Court that since the claims so far received were more than 5,00,000 and if they were to be brought to the Court, it would mean bringing more than 40 Truck loads. It was also submitted that if the High Court so desires about a hundred claims of each category of persons injured by the gas leak could be produced. The Court approved the respondent's suggestion and in fact 500 claims were produced next day in Court. The petitioner did not insist on their being examined by the High Court nor did the High Court, in the view it took of the case, desire to examine the claims. The Hon'ble High Court, after satisfying itself with the bonafides of the respondent when it produced about 500 Claims Forms—about 100 of each categoy—accepted the explanation of the respondent and arrived at the amount of interim compensation on the basis of the lower of the figures submitted in the plaint.

As regards the Enquiry Commission set up by the Government of Madhya Pradesh it may be pointed out that the Commission was set up by the State Government and the decision for not extending the term of the Commission was also taken by the State Government. It may also be pointed out that in the meanwhile a Scientific Commission had been set up by the Central Government for Continuing Studies on effects of Bhopal Gas Leakage on Life System. A Group of Scientists under Dr. S. Vardarajan were also investigating at that time the factors behind the Bhopal toxic gas leakage. The CBI had also taken up investigation to determine the criminal responsibility for the gas leakage.

As regards the statement in para Nos. 5(II) (iii) the particulars of the process claims were not sought by Hon'ble the High Court but some of the claim forms were sought to be perused, and as stated in reply to para No. 5(I), the same were produced, and thus the petitioner's statement of nonproduction is obviously false.

As regards para No. 5 (III) (iv), the respondent tried to misuse the said affidavit

of Dr. Tandon (dated 2nd January, 1988—Annexure D) in Hon'ble the High Court by committing jugglery with the figures to show the number of seriously injured to be 2000 or 4000 only. The said affidavit and the facts and figures were explained by the affidavit of the said Dr. Tandon filed in the High Court on 2nd February, 1988 during the course of arguments and explained in more detail in para No. 106 of the S.L.P. (Civil) No. 8931/88 filed by the respondent.

6. As regards para No. 6 and 7 the District Judge has not made any erroneous assumption.

7. As regards allegations in Para No. 11(b), (c) and (d) regarding non-production of the claims, and what happened in the High Court the same has already been replied to earlier, and are dealt with at length in the S.L.P. (Civil) No. 8931/88 filed by the respondent.

8. As regards para No. 13, the judgment speaks for itself and the analysis of the petitioner of the said judgment needs no reply.

As regards the grounds, the same will be replied to at the time of arguments.

The allegation that the U.S. Appellate Court had given a finding that the petitioner was not liable is unfounded and untenable. Judge Keenan, in the trial court, while dealing with the plea of forum non-conveniens, has expressly stated as follows:

> Leaving aside the question of whether the Government of India or UCIL chose the site and product of the Bhopal plant, the Court will evaluate the facts which bear on the issue of relevant records. The findings below concern the location of proof only, and bear solely upon the forum non conveniens motion. The Court expressly declines to make findings as to actual liability at this stage of the litigation.

The U.S. Appellate Court in its order dated 14th January, 1987 has also confined its discussion to the question of forum. The observation quoted by the petitioner is part of the summary by the said appellate court, of Judge Keenan's judgment which is confined to forum. When this was pointed out to the District Court at Bhopal, the District Court in its order dated 17.12.1987 held that the "observations in this regard of U.S. Appellate Court are confined to question of forum which is no more in dispute now." This finding of the District Court at Bhopal was not challenged by the petitioner either in the revision petition or the review petition before the High Court of Madhya Pradesh at Jabalpur.

To interpret the U.S. Appellate Court's judgment as a finding of no liability is misleading. If that was true picture, to decide, as the U.S. Courts did, that the suit filed by the respondent against the petitioner, should be tried in India after deciding the question of forum non-conveniens is meaningless and would be attributing self-contradiction to Judge Keenan and the U.S. Court of Appeal.

The respondent craves leave to refer to the SLP No. 8931 of 1988 filed by it for a full and correct appreciation of the facts of the case. All allegations to the contrary made by the petitioner in the present SLP are not admitted and are controverted.

This respondent respectfully prays that this Hon'ble Court may be pleased to dismiss this SLP No. 8717 of 1988 filed by the petitioner with costs.

DEPONENT

VERIFICATION

I, Shyamal Ghosh, the above named deponent do hereby verify that the contents of the above affidavit are facts true to my knowledge derived from the records and legal advice and nothing material has been concealed therefrom and no part thereof is false.

DEPONENT

Verified at New Delhi this 2nd day of September, 1988.

DRAWN BY

(R.C. AGGARWAL)
Advocate

SETTLED BY

(VEPA P. SARATHY)
Senior Advocate

RESETTLED BY

(K. PARASARAN)
Attorney General for India