IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 13080 OF 1988

IN THE MATTER OF

UNION OF INDIA
through Secretary,
Ministry of Chemicals & Petrochemicals,
Department of Chemicals,
New Delhi.

(Petitioner)

Versus

UNION CARBIDE CORPORATION,
a Corporation incorporated under
the laws of the State of New York
with its Principal Office at
39, Old Ridgebury Road,
Danbury, Connecticut (U.S.A.)

(Respondent)

And Under Article 136 of the Constitution of India

To
The Hon'ble Chief Justice of India and His Companion Justices of the Supreme Court of India.

The petitioner humbly sheweth that :

I. This is a petition under Article 136 of the Constitution of India for special leave to appeal against the judgment and order passed by the Hon'ble Mr. Justice S.K. Seth, Judge, High Court of Madhya Pradesh, Jabalpur on 13.10.1988 in Civil Revision Petition No. 229 of 1988, *Union Carbide Corporation* vs. *Union of India*, arising out of the Order Passed by Shri M.W. Deo, District Judge at Bhopal in IA No. 33 (true copy annexed herewith as Annexure I)* in Gas Claim Case No. 1113 of 1986, *Union of India* vs. *Union Carbide Corporation* on 16.6.1988, whereby, he dismissed the respondent's petition, requesting him to recuse himself from the case.

[The annexures have been excluded. However where the document has been included the corresponding page of this volume has been provided. *Ed.*]
*See *supra* at 228.

II. It is respectfully submitted that the order passed by the High Court of Madhya Pradesh at Jabalpur, raises the following important questions of law:

(a) Whether the application requesting the Learned District Judge to recuse himself from the case was maintainable in view of the circumstances that the Order of the District Judge granting interim relief of Rs. 350 crores was challenged in revision No. CR. 26/88 before the High Court and the High Court (Honourable Shri Justice S.K. Seth) only varied the quantum by reducing it to Rs. 250 crores and thereby, by necessary implication, negativing any ground for recusal based on the order of the District granting interim relief of Rs. 350 crores and also in view of the further circumstances that a review petition was made regarding the rejection of the contention and the petition for recusal before the District Judge having been based on the very same grounds?

(b) The Order of the learned District Judge having been attacked before the High Court on various grounds on which the recusal application was also based, was it competent for the High Court to allow the revision against the order dismissing the recusal application as the order wherever it is silent must be held in law to have negatived the said contentions and therefore operates against the defendants as estoppel by record?

(c) Whether the Learned Judge of the High Court is not in error in not bearing in mind the principle that a litigant may under certain circumstances ask for transfer on grounds of reasonable apprehension of bias and cannot base a claim for transfer or recusal by virtue of judicial order passed in a case adjudicating on the controversy between the parties?

(d) Can the judgment of a Court, even assuming without admitting for purposes of argument that it has differed from or varied or reversed on the alleged ground that either it has not recorded a finding as to prima facie case or balance of convenience, be a ground to create a reasonable apprehension of bias in the mind of a reasonable man to justify a claim for recusal of the Judge trying a matter, assuming, without admitting in the present case, it could at all be contended that the District Judge has passed the order without expressing his views on a prima facie case?

(e) Whether the Learned Judge of the High Court has correctly stated the test for deciding whether the Judge was prejudiced by bias and whether he has applied the test properly in this particular case?

(f) Whether in finding of the learned Judge of the High Court that the learned District Judge did not give a finding that the Respondent-UCC was prima facie liable is not obviously erroneous?

III. As a result of gas leak which occurred on the night of 2nd/3rd December 1984, a large number of citizens of the city of Bhopal were affected and more than 2600 of them died. On the 5th September 1986, the Union of India filed a Suit under the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985, claiming damages against the Respondent on behalf of the victims of the disaster (Regular Suit No. 1113 of 1986). The defendant filed its Written Statement, and also counter-claim against the Plaintiff-Union of India, and the State of Madhya Pradesh, on 16.2.1986. On the same day, the defendant also filed Application

IA 12, seeking better particulars from the plaintiff. On 2.12.1986, the plaintiff filed a reply to the defendant's Application for better particulars and a reply and counter to defendant's counter-claim and set off.

IV. After certain orders were passed on some IAs, on 2.4.1987, the learned District Judge before whom the Suit was pending handed over a proposal to the parties for reconciliatory substantial interim relief to the gas victims (Annex. II)*. The case was adjuourned at the request of the parties who were exploring the possibility of an overall settlement. Meanwhile, on 23.7.1987, the learned District Judge passed an order on IA 12, directing the plaintiff to furnish better particulars within a month by way of an amendment of the plaint. On 17.8.87, the defendant filed response to the proposal dated 2.4.1987 (Annex. III)**. After hearing both the parties for a short while, the case was adjourned to 27.8.1987, to explore steps for substantial interim reliefs. On 27.8.1988, the plaintiff Union of India filed an application, furnishing further and proper particulars and also filed a reply to the written submissions of the defendant to the Court's proposal for interim relief (Annex. IV)***. On 13.10.87, the case was further adjourned to enable the parties to reach a settlement. On the same day the plaintiff was directed to amend its plaint by incorporating the particulars furnished without prejudice to the right of the defendant to contend that the particulars were not fully supplied.

V. On 18.11.87, the parties reported to the Court that no settlement could be arrived at. The case was then fixed for 27.11.87 for drawing a schedule for hearing the pending petition on the adjourned date, 27.11.1987. The Court, as per the schedule, fixed the case for hearing arguments on the Court's proposal dated 2.4.87 on 7.12.87. On the 3.12.87, the High Court of Madhya Pradesh, while dealing with its proposal to transfer the case from the District Court to the High Court, passed an Order, directing the District Judge to examine if any interim reliefs can be granted to ameliorate the condition of the victims and minimise the human suffering, especially the legal heirs of 2500 or so persons who died in the tragedy, and those who would have been permanently disabled and were not in a position to earn their livelihood, and have nothing to fall back upon.

VI. On 7.12.1987, when the case came up for arguments, on the learned District Judge's proposal, the defendant filed an application IA 28 for directing the plaintiff to furnish information regarding the processed claims of victims. Thereafter, arguments were heard and on that day and the next day, on which day the plaintiff filed a Reply (Annex. V)**** to defendant's Application for furnishing information stating, that such information was not necessary to enable the Court to pass orders regarding interim reliefs. The arguments were concluded and parties were given time till 15.12.1987 for submitting their written arguments, and an Intervener was also permitted to file its written submissions by 12.12.87. On 15.12.87, both the parties filed written submissions and the respondent-UCC also filed a reply to the written submissions of the intervener.

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*See *supra* at 240.

**See *supra* at 243.

***See *supra* at 246.

****The annexure has been excluded. *Ed.*

VII. On 17.12.87, the learned District Judge passed an order, directing the respondent UCC to pay Rs. 3500 millions as interim compensation withing two months, invoking the inherent powers of the Court under section 151, CPC. (Annex. XVI)*

VIII. The respondent-UCC filed a Civil Revision 26 of 1988 (Annex. II)** thereafter which was admitted for final hearing on 2.2.1988. From 2.2.1988, arguments were heard till 5.2.88. The further hearing of the civil revision petition was adjourned to 17.2.88 and the arguments were concluded on 19.2.1988.

IX. On 4.4.88, the High Court of Madhya Pradesh passed an Order on the Civil Revision Petition No. 26/88, reducing the amount to Rs. 250 crores. The High Court decided that the trial Court had no jurisdiction to pass an order under section 151, CPC. The High Court however, held that such a power could be found under the general Law of Torts. On 2.5.88, UCC (Respondent) filed a Review Petition which was registered as MCC No. 172 of 1988, seeking a review of the Judgment of the High Court.

X. On 6.5.88, the Defendant filed an Application IA 33, (Annex. VII)*** asking the District Judge to recuse himself from hearing the Suit. The matter ws posted for hearing on 16.6.88, by which date, the plaintiff had filed its Reply to the Application (Annex. VIII)***. On that date, the defendant made an oral prayer to amend IA 33 on the preliminary objection as to its maintainability. The arguments were heard thereafter and orders were passed by the learned District Judge, dismissing the Application. (Annex. I)****

XI. On 23.6.88, UCC filed a Revision Petition No. 229/88 (Annex. IX)*** against the order of the District Judge, Bhopal dated 16.6.88, rejecting the recusal petition (IA 33). Arguments were heard on 22.7.88 both on the review petition and the revision petition 229/88 and orders were reserved.

XII. On 11.10.88, the High Court of Madhya Pradesh (Hon'ble Mr. Justice S.K. Seth) dismissed the review petition No. MCC 172/88 and on 13.10.88, he passed an Order allowing the Civil Revision Petition No. 229/88. The ground on which the learned Judge of the High Court allowed the Revision was that the learned District Judge had passed his order directing the defendant to pay interim compensation without recording a finding that the Respondent-UCC was prima facie liable. The learned Judge, after holding that the recusal application was maintainable before the learned District Judge further held that the District Court had not recorded a finding regarding the prima facie liability of the respondent and that therefore there could be a reasonable apprehension in the mind of the defendant (UCC) that the learned District Judge was biased against the respondent-UCC, and therefore, he directed a transfer of the case from the learned District Judge, Bhopal to the next senior most District Judge, at Bhopal.

XIII. That no special leave petition or appeal has been filed against the impugned order either in this Hon'ble Court or in the Hon'ble High Court.

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*See *supra* at 283.

**See *supra* at 306.

***The annexure has been excluded. *Ed.*

****See *supra* at 228.

XIV. The petitioner respectfully submits that the Judgment and Order of the High Court dated 13.10.1988—which is appealed against—is without jurisdiction, contrary to law and unsustainable on the following, amongst other.

GROUNDS

1. The High Court should have held that the recusal application was not maintainable before the very Judge who passed the order, inter alia, because:

(a) his order granting interim relief of Rs. 350 crores stands affirmed with the variation to a lesser amount of Rs. 250 crores being granted, by the High Court in revision and that far from causing any apprehension of bias in a reasonable man, it stood vindicated as the correct view of the matter;

(b) The order of the Learned District Judge was challenged before the High Court in revision, inter alia, on the very ground on which recusal application was based, and the defendant having failed in the revision, the learned Judge could no longer rely on these grounds. On the contrary, the order passed in revision clearly shows that the grounds for recusal were wholly untenable.

(c) The confirmation of the Order of the District Judge by the High Court though for a reduced amount has the effect in law, of the grounds for recusal standing rejected and that the High Court could not have passed the order which is impugned. Besides the High Court overlooked that no grievance was made on this account in the review petition No. 172 of 1988 which is an elaborate petition setting out several grievances.

(d) The High Court overlooked that an application before the same District Judge for recusal was incompetent and the revision before the High Court was also equally incompetent and liable to be dismissed.

(e) The High Court failed to appreciate that a ground for recusal is different from the ground for transfer. In a recusal, prayer is to request the Judge to disqualify himself from hearing the case further; in and application for transfer, even the reasonable apprehension on the part of a reasonable party would be a ground. The Learned Judge of the High Court has exercised the power of transfer under Section 24 C.P.C. by nominating also the Additional District Judge as the Court to which the suit will stand transferred thereby not validly exercising the power of revision under Section 115 C.P.C. but a power under Section 24 C.P.C. which he had no jurisdiction to do so.

2. The High Court, while stating the test for deciding whether a Judge is biased against a litigant, had not applied it appropriately in this case. Most defeated litigants would feel aggrieved by an adverse order, and merely because the order is adverse to him, he cannot be allowed to say that the Judge is biased, and that is what exactly happened in this particular case. The test really is whether a reasonable person has a reasonable ground to feel that the Judge is showing bias, and not by an aggrieved litigant complaining against the order adverse to him especially when the order was confirmed by the High Court. Such a litigant can only move the Higher Court for transfer.

3. The finding in paragraph 53 of the Order that the learned District Judge did not record any finding on the question as to whether there existed any

prima facie case in favour of the plaintiff (Union of India) that if the suit proceeded to trial, it would obtain a decree for substantial damages against the respondent-UCC, is erroneous. The District Court did record a finding in para 23 of its order on the basis of pleadings, that it is undisputed that a hazardous activity of storing deadly material and its leakage caused the tragedy and resulted in injury to the people. The admitted facts did not require any detailed discussion and these admitted facts brought the case within the rule of strict liability laid down in *M.C. Mehta's* case. The two ingredients of 'Hazardous activity' and "harm to the people" are required to attract the rule in *Mehta's* case. These were undisputedly present in this case. They made out a "strong prima facie case", and the trial court called it "material before the Court in the nature of quantity and quality". that does not alter the substance of the case. Further, the question of granting relief against the UCC was considered in this para 23 where, again it was undisputed that UCC owns 50.9% shares of UCIL and that was enough to show that UCC always had the power and capacity to control the working of UCIL. The trial court was right in observing that at an interlocutory stage these broad undisputed facts were enough to grant relief against UCC. That was the "prima facie" case against UCC. The High Court also found by its order dated 4.4.1988 that the material on record made out a strong prima facie case against UCC. Style of writing may be different but the fact remains that the prima facie or sufficient material did exist on record to grant interim relief and it was relied on by the learned District Judge. Brevity in the order of the trial Court cannot be branded as "bias", especially when it is an interlocutory matter. In fact, the High Court, when it found that the respondent-UCC was more than prima facie liable, relied upon the material relied on by the District Judge for coming to that conclusion. Under the circumstances, there was a finding regarding the prima facie liability of the respondent UCC even though the words were not used.

4. The High Court overlooked that in a suo motu proceeding initiated for transfer by a single judge the matter was finally heard and disposed of by a Division Bench of the High Court. The Division Bench in the concluding portion of its order having directed the District Judge to examine if any interim relief could be granted to ameliorate the conditions of the victims and minimise the human sufferings, especially the legal heirs of 2500 or so persons who died in the tragedy and those who would have been permanently disabled and were not in a position to earn their livelihood and have nothing to fall back upon and that this direction by the Division Bench which is binding on the defendant who was a party clearly established the strong prima facie case and that the District Judge could have proceeded to determine the quantum of interim relief without even recording a finding on prima facie case, though as a matter of fact, he has recorded a finding of prima facie case, without giving any nomenclature of prima facie case to that finding.

5. In fact, the High Court has made out a new case for the respondent-UCC. The case of the respondent-UCC always was that the District Court did find liability and that "the form of the order clearly shows that the District Judge has prejudged liability even before discovery, framing of issues and evidence" Its grievance was that the District Court did so without discovery, trial or evidence. It was never the contention of the respondent-UCC that there was no prima faice finding.

6. The High Court erred in criticising the order of the District Court as empty rhetoric.

PRAYER

It is therefore prayed that this Hon'ble Court may be pleased to grant special leave to the petitioner for appealing against this order of the High Court of Madhya Pradesh, dated 13.10.1988 and pass such other orders as this Hon'ble Court deems meet and just.

Drafted by:

Shri Gopal Subrahamaniam,
Advocate

Filed by :

Miss A. Subhashini
Advocate for the Petitioner

and

Settled by :

Shri Vepa P. Sarathy,
Senior Advocate

Re-settled by :

Shri K. Parasaran,
Attorney General for India.

Dated : 26.10.1988