



International Environmental
Law Research Centre

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.167 OF 2003
A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

IN THE MATTER OF

Abdul Samad Khan and Others

Petitioners

Versus

Union of India and Others

Respondents

WITH

I.A.NO. _____ OF 2003: An application for direction

Advocate for the Petitioners:

Dr S. Muralidhar

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I. SYNOPSIS AND LIST OF DATES

This writ petition is being filed as a class -action litigation seeking the protection and enforcement of fundamental rights under Articles 14 and 21 of the Constitution of India of the victims of the Bhopal Gas Disaster. This petition concerns the issue of disbursement of the amount of over Rs. 1360 crores remaining with the Government of India out of the compensation amount of 470 million US Dollars paid by the Union Carbide Corporation (UCC) to the victims of the Bhopal Gas Leak Disaster. The Petition raises also the issue of non-payment of interest on the compensation amount awarded to the victims by the tribunals constituted under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (hereinafter referred to as 'Claims Act'). The principal contention of the petitioners is that the retention of the remaining compensation money by the Union of India coupled with the denial of payment of interest on the compensation amounts awarded, which by themselves are meagre, is arbitrary, discriminatory, illegal and unconstitutional. Accordingly, this Writ Petition seeks a writ of mandamus to the respondent Union of India to distribute the remaining amount out of the compensation money retained by it among the victims and also ensure payment on interest on the amount of compensation awarded to the victims in individual claims from the date of accident i.e. 2/3.12.1984 till the date of payment to the Claimants at a rate determinable in accordance with the provisions of Interest Act, 1978.

The petitioners reliably understand that out of the compensation settlement amount of 470 million U.S. dollars deposited by the Tort -feasor, Union Carbide Corporation (UCC) pursuant to the settlement recorded by this Hon'ble Court on 14.2.1989 (order reported in (1989) 1 SCC 674 and confirmed in a later decision Union Carbide Corporation vs. Union of India (1991) 4 SCC 584), a sum of over Rs.1360 crores remains undisbursed. This amount legitimately belongs to and is payable to the victims of the Bhopal Gas Disaster in terms of the settlement and ought to be distributed among them on a pro-rata basis. The amount could also be utilized towards the payment of interest to each of them in relation to the individual claim awarded under the Claims Act. The Petitioners submit that the compensation amounts awarded have been too meagre in comparison with the minimum amounts contemplated to be paid in terms of the settlement. Further, many of the Claimants have had to wait for over 12 to 18 years after the disaster, to receive the meagre compensation and without interest. In these circumstances the retention by the Union of India of the compensation amount payable to the victim and the denial of interest on the compensation amount awarded is arbitrary, illegal and unconstitutional. Hence this writ petition.

LIST OF DATES

- 2/3.12.1984:** On the intervening night of 2/3 December 1984 the worst ever industrial disaster of twentieth century occurred in Bhopal with the leakage of 40 tonnes of methyl isocyanate (M.I.C.) and other lethal gases from the factory of Union Carbide Corporation (India) Ltd., a subsidiary of Union Carbide Corporation, United States of America (UCC).
- The leakage of M.I.C. gas resulted in the death of over 4,000 people on the date of disaster itself and this figure has swelled to 16,000 over the years during which victims have continued to suffer from the after effects of the gas disaster. Apart from deaths of victims several lacs of others in Bhopal including unborn children suffered from multiple systemic injuries. The figures of the injured have also risen dramatically in later years with earlier undiagnosed and incurable injuries manifesting in the

following years. The victims of Bhopal gas disaster continue to live a miserable life without there being any cure in sight for many of the ailments they continue to suffer on account of the Bhopal Gas Disaster.

22.2.1985: On 22.02.1985 Parliament enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985 conferring certain powers on the Central Government to pursue claims for damages as a plaintiff, on behalf of the victims, against the Union Carbide Corporation and its subsidize. It is significant that the Claims Act did not contain any provision for payment of interest on the compensation payable to the victims whose claims were processed under the Act.

1985: By virtue of Section 9 of the Claims Act, the Central Government framed the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 (herein-after referred to as the Scheme).

Para 11 of the Scheme which relates to disbursal and apportionment of certain amounts reads as under:

Disbursal. appointment. etc. of certain amounts

11. (1) The disbursal of any amounts under this Scheme shall be made by the Deputy Commissioner to each claimant through credit in a bank or postal saving account, Bhopal gas victims monthly under scheme 1992.

(Inserted by Notification No. G.S.R. 910(E) dated 2nd December, 1992 of gazette of India extraordinary).

(2) The Central Government may determine that total amount of compensation to be apportioned for each category of claims and the quantum of compensation payable, in general, in relation to each type of injury or loss.

(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.

(4) In determining the quantum of compensation payable to the claimants within different categories specified in paragraph 5, regard shall be had amongst other factors, to the following factors, namely:

- (a) the probable life span of the person affected by the Bhopal gas leak disaster;
- (b) the actual or projected earning capacity of the person so affected;
- (c) the likely expenditure on immediate and anticipated medical treatment of the person so affected;
- (d) mental anguish and physical injury suffered by a person in the Bhopal gas leak disaster; and
- (e) the type and severity of physical injury suffered by the persons so affected.

(5) In the event of a dispute as to disbursal of the amounts received in satisfaction of claims, an appeal shall be against the order of the Deputy Commissioner to the Additional Commissioner, who may decide the matter and make such disbursal as he may, for reasons to be recorded in writing; think fit.

(6) The provisions of sub-paragraphs (6) and (7) of paragraph of the Scheme shall apply to the appeal under-paragraph (5) as they apply to the appeal under sub-paragraph (5) of that paragraph”.

The scheme also did not contain any provision for payment of interest on the amounts awarded as compensation to individual claims processed under the said Act.

14.2.1989: A settlement was arrived at between the tortfeasor Union Carbide Corporation (UCC) and the Union of India and was recorded on 14.2.1989 and 15.2.1989 in the proceedings of this Hon'ble Court reported in 1989 (1) SCC 674.

Pursuant to the said settlement, the Union Carbide Corporation deposited a sum of U.S. Dollars 470 million in full and final settlement of the claims, rights and liabilities. The payment was made to the Union of India as claimant and for the benefit of all victims of the Bhopal gas disaster under the Bhopal Gas Disaster Registration and Processing of Claims (Scheme), 1985 and not as compensation, penalty or punitive damages. This Court directed that (1989 (1) SCC page 674 at 676), upon full payment, the Union of India and the State of Madhya Pradesh were required to, "take all steps which may in future become necessary in order to implement and give effect to this order including but not limited to ensuring that any suits claims or civil or criminal complaints which may be filed in future against any corporation or company or person referred to in this settlement are defended by them and disposed of in terms of this order."

24.2.1989: On 24.2.1989 the Constitution Bench of this Hon'ble Court by order took note of the fact that 420 Million U.S. Dollars had been deposited in favour of the Registrar of the Hon'ble Supreme Court of India along with demand draft of the State Bank of India for Rs. 68.99 Crores, It was directed that "Registrar General of the Court will hand over

both the aforesaid Bank draft to Shri C.S. Subramaniam Manager, Reserve Bank of India for depositing in the Reserve Bank of India in two separate accounts, Dollar Account and Rupee Account in the name of the Registrar of this Hon'ble Court. The deposit of US 420 Million Dollars will be held in Dollars”

4.5.1989: On 4.5.1989, this Hon'ble Court issued clarificatory order (reported in 1989 (3) SCC 38) in which the settlement was approved and it was indicated that the settlement included the cases of death and various categories of injuries and that the settlement was based on the projected amounts of minimum and maximum compensation that would be payable in each of those categories.

S.No.	Category	Projected compensation
1.	Death	Rs. 2 lakhs
2.	Total permanent disability	Rs. 2 lakhs
3.	Permanent partial disability	Rs. 1 lakh
4.	Temporary partial disability	Rs.50,000/-
5.	Minor injuries	Rs.20,000/-
6.	Loss of personal belongings	Rs.15,000/-
7.	Loss of livestock	Rs.10,000/-

It was estimated at the time of settlement that the total number of fatal cases (deaths) was about 3000 and those suffering grievous and serious personal injuries was around 30,000. It was expected that if the suit had proceeded to trial each death claim would have been settled for Rs. 2 lakhs, each case of total permanent disability Rs. 2 lakhs, each case of permanent partial disablement Rs.1,00,000 and each case of temporary partial disablement Rs. 50,000/-. As it has thereafter transpired the actual figures of those suffering deaths

and injuries was much higher than the figures on the basis of which this settlement was arrived at. The irony of it is that despite a larger number of claims, than that which was projected, being settled there still remains a sum of over Rs. 1360 crores lying in the account which ought to be distributed among the victims themselves. This only goes to show that how little compensation each of the victims has been paid from out of the compensation amount deposited by the U.C.C.

22.12.1989: Meanwhile the Writ Petitions challenging the constitutionality of the Claims Act were heard and decided by Judgment dated 22.12.1989 by a Constitution Bench of this Hon'ble Court in Charan Lal Sahu v. Union of India, 1990 (1) SCC 613. While upholding the Constitutional validity of the Act this Hon'ble Court after examining the records made available to it, explained that the settlement arrived at between the Union Carbide Company and Union of India was arrived on the expectation that the 470 million US Dollars would constitute a reasonable amount for settling the claims in relation to the 3,000 deaths and 30,000 injuries which formed the basis for arriving at the said figure.

3.10.1991: The Constitution Bench of this Hon'ble Court by a decision settlement arrived at and recorded on 3.10.1991 reported in (1991) 4 SCC 584, upheld the settlement arrived at and recorded in the order dated 15.2.1989 in so far as the civil liability of the Union Carbide Corporation was concerned.

-- Soon after the order dated 3.10.1991 passed by this Hon'ble Court, the Tribunals constituted under the Claims Act began processing of the claims filed by the victims of Bhopal gas disaster.

28.5.1993: In the meanwhile on 28.5.1993 this Hon'ble Court by order (reported in 1993 Supp (4) SCC 491) directed the payment of interim relief to the victims of Bhopal gas disaster pending disposal of their claims. This

Hon'ble Court also sanctioned withdrawal by the Union of India of a sum of Rs.120 crores from the amount of interest that had accrued on the compensation amount deposited by the Union Carbide Corporation for the payment of interim relief and this payment of interim relief was directed to be continued for a period of 3 years.

- 12.5.1995:** This Hon'ble Court issued further orders on 12.5.1995 directing that the claims arising from death of victims must be given priority and that the minimum sum of compensation should be paid to those who were able to produce proof of residence subject to the final assessment of claim. It was directed that the interim relief of Rs.750/- per month would be continued to be paid till payment of final compensation. This was followed by a further order dated 12.10.1995 giving directions with regard to disbursement of interim compensation for death claims.
- 2.3.2001:** By order dated 2.3.2001 passed by this Hon'ble Court in W.P. (Civil) No.415 of 2000 (Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India) this Hon'ble Court gave directions for restoration of certain claims which had been closed by the office of the Welfare Commissioner on the ground that the Claimants had not pursued the case.
- 31.3.2002:** The present position as per the records of the office of the Welfare Commissioner which have been made available to the petitioners is that a total of 10,29,431 claims were received upto 31.3.2002 of which 10,29,254 were adjudicated and of these 5,66,786 cases have been awarded compensation. The total amount said to have been disbursed by the office of the Welfare Commissioner upto 31.3.2002 was Rs.1151.51 Crores and the balance available for disbursement was Rs. 1360 crores (Approx.)
- A survey conducted by the Health and Documentation Unit of the Sambhavana Trust, a non-profit organization, providing health care to the Bhopal Gas Victims, among the residents of Jaiprakash Nagar a community right opposite the Union Carbide factory and the most severely affected areas by the gas leak disaster of December, 1984 showed that 91% of the Claimants had received minimum compensation of Rs.25,000/-.

- The above summary of tables of the data collected during the Survey of just one severely effected ward in Bhopal shows the grave injustice done to the victims of Bhopal gas disaster and how most of them have been denied a just and fair compensation.
- The Petitioners their groups representing them have been making several representations to the Union of India and the Government of Madhya Pradesh that the balance amount lying undisbursed from the compensation paid by Union Carbide Corporation should be disbursed amongst the victims whose claims have been processed and settled. The Respondent Government have remained indifferent to these requests.
- That with' no response forthcoming from the respondents, the petitioner has no efficacious or alternative remedy except to approach this Hon'ble Court for seeking relief as prayed for in the Writ Petition.

5.3.2003: Writ Petition filed.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.167 OF 2003

IN THE MATTER OF:

1. Abdul Samad Khan
Aged 40
Behind Police Station,
1/24 Gandhinagar,
Bhopal,
Madhya Pradesh
2. Akhtar Hassan
Aged 42,
House No. 20, Gali
No.1, Gufa Mandir
Bhopal, M.P.
3. Khalid
Aged 55 years
House No.50,
Noor Mahal Road
Bhopal, M.P.
4. Navkumar Soni
Aged 35 years
House No. 29,
Hawamahal Road,
Malipura, Bhopal

Madhya Pradesh

5.	<p>Maimuna Bi Aged 36 years, House No. C-54, Bagh Munshi Husain Khan</p>	
6.	<p><i>Bhopal, Madhya Pradesh</i> Saleem, Aged 40 years House No.9, Near Kachhi Masjid Bhopal,</p>	
7.	<p><i>Madhya Pradesh</i> Rafiq, Aged about 30 years House No.9, Badi Bawdi, PGBT, College Bhopal,</p>	
8.	<p><i>Madhya Pradesh</i> Suresh Kumar Gupta, Bawdi, PGBT, College Aged 36 years House No. 55, Moti Quarters, Teela Jamalpura Bhopal, Madhya Pradesh</p>	

9. Khalil Rehman
Aged 55 years
House No. 930,
Indra Nagar,
Behind Sulabh
Complex.
Bhopal,
Madhya Pradesh
10. Mrs. Champa Devi Shukla
aged 50 years
House No.126, Gali No.8,
Prem Nagar Colony,
Bhopal, M.P.
11. Kamlesh Sharma,
Aged 40 years,
House No.8,
Gali No.4,
Ibrahimganj,
Bhopal, M.P.
12. Raqeeb Chhote Khan
Aged 55 years,
House No. 16,
Behind Laxmi Talkies,
Bhopal, M.P.
13. Vatsayan Jain
Aged 28 years,
House No.41,
Sogani Bhavan,
Jain Mandir Road
Chowk, Bhopal, M.P.

14. Mrs. Asha Bi
Aged 40 years
Anandi Pan Bhandar
Tawa Miyan Ka Mahal,
Lakherapura,
Bhopal,
Madhya Pradesh

15. Mrs. Susheela
Aged 32 years
House No.6,
Gali No.1, Azad
Market, Jumerati,
Bhopal (MP)

16. Mrs. Munni Bi
Aged 28 years
House NO.19,
Teli Wali Gali,
Mangalwara
Bhopal, M.P.

17. Mrs. Chanda Bai Sahu
Aged 32 years
House No. 448,
Near Second Railway
Crossing, Kainchi
Chhola, Bhopal,
Madhya Pradesh

18.	<p>Mrs. Arti</p> <p>Aged 28 years</p> <p>Near Bharat Talkies,</p> <p>Chhawni</p> <p>Bhopal, M.P.</p>	
19.	<p>Mrs. Rashida Bi</p> <p>Aged 46 years</p> <p>House No. 24, Gali No.2</p> <p>Behind Tallaiya Police</p> <p>Station, Bhopal, M.P.</p>	
20.	<p>Mr. Sita Ram</p> <p>Aged 31 years,</p> <p>House No. 17,</p> <p>Gali No.2,</p> <p>Bhoipura, Budhwara,</p> <p>Bhopal, M.P.</p>	
21.	<p>Mr. Jagdish</p> <p>Aged 30 years,</p> <p>House No. 34,</p> <p>Gali No.7, Behind</p> <p>Chahak Hospital,</p> <p>Moti Masjid</p> <p>Bhopal, Madhya Pradesh</p>	
22.	<p>Faisal Ahmed</p> <p>Aged 32 years</p> <p>House No.9, Kamala Park</p> <p>Bhopal, M.P.</p>	

23. Mr. Abdul Zahid
Aged 42 years
Behind Rotary Club Office,
Banganga, Bhopal

MADHYA PRADESH

24. Mrs. Aziza,
Aged 60 years
House No.132,
Roshanpura Naka,
Bhopal, M.P.

25. Rais Khan
Aged 42 years
House NO.132, Roshanpura
Naka, Bhopal
Madhya Pradesh

26. Rajendra Kumar
Aged 29 years
HIG 59, Behind BJP Office,
Malaviya Nagar,
Bhopal, M.P.

27. Mohammed Rafiq Khan
Aged 55 years
Opposite Kendriya Vidyalaya,
Maida Mill Road,
Bhopal, M.P.

28. Sonu
Acharya Narendra Dev Nagar,
Bhopal,
Madhya Pradesh

29. Hukum Chand Sharma
House No. 65,
Near Church, Ashoka
Garden, Bhopal
Madhya Pradesh

30. Hanif Sagari
Aged 60 years
House No.17,
Near Flour Mill, Jinsi
Bhopal,

31. Madhya Pradesh
Mrs. Basanti Bai,
Aged 35 years,
House No.5,
Behind Sahu Temple,
Jhangirabad,

32. Bhopal, Madhya Pradesh
Ratan Lal Khare,
Aged 40 years,
House No.1,
Gali No.1, Valmiki Temple

LAXMIGANJ MANDI

33. Mrs. Tara Bai,
Aged 28 years,
House NO.11,
Gali No.2,
Aheerpura Barkhedi,
Bhopal, Madhya Pradesh

34. Mrs. Leela Bai
Aged 33 years,
House No. 514, Vijay Nagar,
Chandbad, Bhopal
Madhya Pradesh
35. Mrs. Shanti Bai,
Aged about 40 years
House No.21, Near Textile Mill,
Bhopal, Madhya Pradesh
36. Mrs. Shabnam,
Aged 27 years,
Plot No. 168, Timber Market,
Behind Dussera Maidan,
Bhopal, Madhya Pradesh

PETITIONERS

VERSUS

1. Union of India through its Secretary,
Ministry of Health and Family Welfare,
Shashtri Bhawan,
New Delhi 110 001
2. State of Madhya Pradesh,
through its Secretary,
Bhopal Gas Tragedy,
Relief and Rehabilitation Department,
Ballabh Bhawan, Bhopal,
Madhya Pradesh.

3. Reserve Bank of India
through its Governor
Dr. Bimal Jalan
Sansad Marg,
New Delhi

RESPONDENTS

AND IN THE MATTER OF:

A PETITION UNDER ARTICLE 32 OF THE CONSTITUTION
OF INDIA

To

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

The humble petition of the petitioner above named

MOST RESPECTFULLY SHOWETH:

1. This Writ Petition under Article 32 of the Constitution of India is being filed as a class action litigation by 36 individuals who are Indian Citizens representing the victims of the Bhopal Gas Disaster and seeks the protection and enforcement of their fundamental rights under Articles 14 and 21 Constitution of India.

1.2 This petition concerns the issue of the unjustified retention by the Union of India of a sum of Rs. 1360 crores of the compensation amount paid by UCC and non-payment of interest on the amount awarded to each of the victims pursuant to the claims filed by them under the Bhopal Gas Disaster (Processing of Claims) Act, 1985 (hereinafter 'Claims Act'). The principal contention of the petitioners in this writ petition is that the Union of India is obliged in law to distribute the remaining

compensation amount amongst the victims whose claims have been settled on a pro-rata basis and its failure to do so is wholly arbitrary and illegal. The other contention is that in the absence of any provision for payment of interest in the Claims Act, the non-payment of interest on the compensation amount awarded in individual claims processed under the Claims Act is arbitrary, discriminatory, illegal and unconstitutional. The writ petition seeks a declaration to the above effect and consequent writ of mandamus directing the respondents jointly and severally to ensure pro-rata disbursement of the remaining compensation amount among the victims and to make the payment of interest in accordance with the Interest Act, 1978 to each of the Bhopal Gas victims who have been awarded compensation pursuant to the claims filed under the Claims Act and in accordance with the provisions of the Interest Act, 1978.

PROFILE OF THE PETITIONERS

- 1.1 The Petitioners who are 36 in number are Indian Citizens who are themselves victims of the Bhopal Gas Disaster. Each of them comes from the 36 wards in the Bhopal City which were affected by the leak of the deadly MIC gas from the factory of the Union Carbide India Limited (UCIL) (whose principal was the Union Carbide Corporation (UCC)] in Bhopal on the intervening night of December 2/3rd 1984. This Petition is being filed by these 36 Petitioners representing and seeking similar reliefs on behalf of each of the affected victims of the Bhopal Gas disaster who have had their claims processed and settled by the authorities concerned in terms of the Claims Act.
- 1.2 Respondent NO.1 Union of India is impleaded through the Ministry of Chemical and Fertilizers, which is the nodal ministry concerned with issues relating to the Bhopal Gas disaster. Respondent No.1, is therefore a necessary and proper party to the writ petition.

- 1.3 Respondent NO.2 is the State of Madhya Pradesh, through the Department of Gas and Rehabilitation which is directly concerned with the protection and enforcement of the rights of the Bhopal Gas victims and has been charged with the constitutional and statutory duty for ensuring that the Bhopal Gas victims are not denied their basic right to life and livelihood. This would include the payment of compensation, both for the injuries suffered and the deaths caused on account of the Bhopal Gas disaster. Respondent NO.2 is accordingly a necessary and proper party to the writ petition.
- 1.4 The Respondent No.3, the Reserve Bank of India is concerned with the transactions relating to the compensation amount of 470 million U.S. dollars deposited by the Union Carbide Corporation (UCC) pursuant to the settlement recorded by this Hon'ble Court on 14.2.1989 and reported in (1989) 1 SCC 674. The Reserve Bank of India has been periodically releasing amounts to the State of Madhya Pradesh from the said deposit towards disbursement of compensation payable to individual claimants. The R.B.I. is entrusted with the duty of providing complete accounts for the amount spent and for the amount remaining to be disbursed. Since the relief claimed in the writ petition directly involves the R.B.I. in the context of implementation of the order of this Hon'ble Court, the respondent NO.3 is therefore, necessary and proper party to the present writ petition.

QUESTIONS OF LAW:

2. The present Writ Petition raises the following questions of law of general public importance for the kind determination by this Hon'ble Court:

- A) Is not the respondent Union of India obliged in law to ensure the pro-rata distribution, among the Bhopal Gas Victims whose claims have been processed and settled, of an amount of over Rs. 1360 crores still remaining with it undisbursed from the compensation amount paid by the Union Carbide Corporation to the victims of the Bhopal Gas Disaster?
- B) Is not the retention by the Union of India of over Rs. 1360 crores of the compensation amount payable to the Bhopal Gas Victims, not unfair, unreasonable and arbitrary and violative of the fundamental rights of the Bhopal Gas Victims under Articles 14 and 21 of the Constitution?
- C) Is not the denial of interest on the compensation amount awarded to victims of Bhopal Gas Disaster while settling the claims made under the Bhopal Gas disaster (Processing of Claims) Act, 1985 arbitrary and discriminatory and violative of Articles 14 and 21 of the Constitution of India?
- D) Is not the absence of a provision for the payment of interest in the Bhopal Gas Disaster (Processing of Claims) Act, 1985 arbitrary and discriminatory and violative of Article 14 of the Constitution?
- E) Are not the victims of Bhopal Gas tragedy whose claims have been processed and compensation awarded entitled to payment of interest in accordance with the provisions of the Interest Act, 1978 from the date of accident i.e. 2/3.12.1984 till the date of payment and as per the determined under the said Act?

- F) Considering that the compensation amount deposited by the tortfeasor, Union Carbide Corporation (UCC) towards the settlement of claims of the victims of Bhopal gas disaster has to be utilised exclusively towards the said purpose, is not the retention of undisbursed amounts by the Union of India by itself and through the State of Madhya Pradesh and RBI wholly illegal and violative of the rights of Bhopal Gas victims?

FACTS OF THE CASE:

3. Facts of the case briefly stated are as follows:

3.1 On the intervening night of 2/3 December 1984 the worst ever industrial disaster of twentieth century occurred in Bhopal with the leakage of 40 tonnes of methyl isocyanate (M.I.C.) and other lethal gases from the factory of Union Carbide Corporation (India) Ltd., a subsidiary of Union Carbide Corporation, United States of America (UCC).

3.2 The leakage of M.I.C. gas resulted in the death of over 4,000 people on the date of disaster itself and this figure has swelled to 16,000 over the years during which victims have continued to suffer from the after effects of the gas disaster. Apart from deaths of victims several lacs of others in Bhopal including unborn children suffered from multiple systemic injuries. The figures of the injured have also risen dramatically in later years with earlier undiagnosed and incurable injuries manifesting in the following years. The victims of Bhopal gas disaster continue to live a miserable life without there being any cure in sight for many of the ailments they continue to suffer on account of the Bhopal Gas Disaster.

3.2 On 22.02.1985 Parliament enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985 conferring certain powers on the Central Government to pursue claims for damages as a plaintiff, on behalf of the victims, against the Union Carbide Corporation and its subsidize. A true copy of Bhopal Gas Disaster (Processing of Claims) Act, 1985 passed by the Parliament on 22.2.1985 is annexed herewith and marked as **Annexure-P/1**. It is significant that the Claims Act did not contain any provision for payment of interest on the compensation payable to the victims whose claims were processed under the Act.

3.3 By virtue of Section 9 of the Claims Act, the Central Government framed the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 (hereinafter referred to as the Scheme), is annexed herewith and marked as **Annexure-P/2**.

Para 11 of the Scheme which relates to disbursal and apportionment of certain amounts reads as under:

Disbursal. appointment. etc. of certain amounts

11. (1) The disbursal of any amounts under this Scheme shall be made by the Deputy Commissioner to each claimant through credit in a bank or postal saving account, Bhopal gas victims monthly under scheme 1992.

(Inserted by Notification No. G.S.R. 910(E) dated 2nd December, 1992 of gazette of India extraordinary).

(2) The Central Government may determine that total amount of compensation to be apportioned for each category of claims and the quantum of compensation payable, in general, in relation to each type of injury or loss.

(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.

(4) In determining the quantum of compensation payable to the claimants within different categories specified in paragraph 5, regard shall be had amongst other factors, to the following factors, namely:

(a) the probable life span of the person affected by the Bhopal gas

leak disaster;

(b) the actual or projected earning capacity of the person so affected;

(c) the likely expenditure on immediate and anticipated medical treatment of the person so affected;

(d) mental anguish and physical injury suffered by a person in the Bhopal gas leak disaster; and

(e) the type and severity of physical injury suffered by the persons so affected.

(5) In the event of a dispute as to disbursement of the amounts received in satisfaction of claims, an appeal shall be against the order of the Deputy Commissioner to the Additional Commissioner, who may decide the matter and make such disbursement as he may, for reasons to be recorded in writing; think fit.

(6) The provisions of sub-paragraphs (6) and (7) of paragraph of the Scheme shall apply to the appeal under-paragraph (5) as they apply to the appeal under sub-paragraph (5) of that paragraph”.

The scheme also did not contain any provision for payment of interest on the amounts awarded as compensation to individual claims processed under the said Act.

3.4 A settlement was arrived at between the tortfeasor Union Carbide Corporation (UCC) and the Union of India and was recorded on 14.2.1989 and 15.2.1989 in the proceedings of this Hon'ble Court reported in 1989 (1) SCC 674. A true copy of the orders dated 14.2.1989 and 15.2.1989 reported in (1989) 1 SCC 674 is annexed herewith and marked as **Annexure-P/3**.

3.5 Pursuant to the said settlement, the Union Carbide Corporation deposited a sum of U.S. Dollars 470 million in full and final settlement of the claims, rights and liabilities. The payment was made to the Union of India as claimant and for the benefit of all victims of the Bhopal gas disaster under the Bhopal Gas Disaster Registration and Processing of Claims (Scheme), 1985 and not as compensation, penalty or punitive damages. This Court directed that (1989 (1) SCC page 674 at 676), upon full payment, the Union of India and the State of Madhya Pradesh were required to, “take all steps which may in future become necessary in order to implement and give effect to this order including but not limited to ensuring that any suits claims or civil or criminal complaints which may be filed in future against any corporation or company or person referred to in this settlement are defended by them and disposed of in terms of this order.”

3.6 On 24.2.1989 the Constitution Bench of this Hon’ble Court by order took note of the fact that 420 Million U.S. Dollars had been deposited in favour of the Registrar of the Hon’ble Supreme Court of India along with demand draft of the State Bank of India for Rs. 68.99 Crores, It was directed that “Registrar General of the Court will hand over both the aforesaid Bank draft to Shri C.S. Subramaniam Manager, Reserve Bank of India for depositing in the Reserve Bank of India in two separate accounts, Dollar Account and Rupee Account in the name of the Registrar of this Hon’ble Court. The deposit of US 420 Million Dollars will be held in Dollars”. A true copy of the order dated 24.8.1989 passed by this Hon’ble Court in Civil Appeal Nos.3187-88 is annexed herewith and marked as **Annexure-P/4.**

3.7 On 4.5.1989, this Hon’ble Court issued clarificatory order (reported in 1989 (3) SCC 38) in which the settlement was approved and it was indicated that the settlement included the cases of death and various categories of injuries and that the settlement was based on the projected amounts of minimum and maximum compensation that would be payable in each of those categories.

S.No.	Category	Projected compensation
1.	Death	Rs. 2 lakhs
2.	Total permanent disability	Rs. 2 lakhs
3.	Permanent partial disability	Rs. 1 lakh
4.	Temporary partial disability	Rs.50,000/-
5.	Minor injuries	Rs.20,000/-
6.	Loss of personal belongings	Rs.15,000/-
7.	Loss of livestock	Rs.10,000/-

It was estimated at the time of settlement that the total number of fatal cases (deaths) was about 3000 and those suffering grievous and serious personal injuries was around 30,000. It was expected that if the suit had proceeded to trial each death claim would have been settled for Rs. 2 lakhs, each case of total permanent disability Rs. 2 lakhs, each case of permanent partial disablement Rs. 1,00,000 and each case of temporary partial disablement Rs. 50,000/-. As it has thereafter transpired the actual figures of those suffering deaths and injuries was much higher than the figures on the basis of which this settlement was arrived at. The irony of it is that despite a larger number of claims, than that which was projected, being settled there still remains a sum of over Rs. 1360 crores lying in the account which ought to be distributed among the victims themselves. This only goes to show that how little compensation each of the victims has been paid from out of the compensation amount deposited by the U.C.C.

3.8 Meanwhile the Writ Petitions challenging the constitutionality of the Claims Act were heard and decided by Judgment dated 22.12.1989 by a Constitution Bench of this Hon'ble Court in Charan Lal Sahu v. Union of India, 1990 (1) SCC 613. While upholding the Constitutional validity of the Act this Hon'ble Court after examining the records made available to it, explained that the settlement arrived at between

the Union Carbide Company and Union of India was arrived on the expectation that the 470 million US Dollars would constitute a reasonable amount for settling the claims in relation to the 3,000 deaths and 30,000 injuries which formed the basis for arriving at the said figure.

3.9 The Constitution Bench of this Hon'ble Court by a decision settlement arrived at and recorded on 3.10.1991 reported in (1991) 4 SCC 584, upheld the settlement arrived at and recorded in the order dated 15.2.1989 in so far as the civil liability of the Union Carbide Corporation was concerned.

3.10 Soon after the order dated 3.10.1991 passed by this Hon'ble Court, the Tribunals constituted under the Claims Act began processing of the claims filed by the victims of Bhopal gas disaster.

3.11 In the meanwhile on 28.5.1993 this Hon'ble Court by order (reported in 1993 Supp (4) SCC 491) directed the payment of interim relief to the victims of Bhopal gas disaster pending disposal of their claims. This Hon'ble Court also sanctioned withdrawal by the Union of India of a sum of Rs.120 crores from the amount of interest that had accrued on the compensation amount deposited by the Union Carbide Corporation for the payment of interim relief and this payment of interim relief was directed to be continued for a period of 3 years.

3.12 This Hon'ble Court issued further orders on 12.5.1995 directing that the claims arising from death of victims must be given priority and that the minimum sum of compensation should be paid to those who were able to produce proof of residence subject to the final assessment of claim. It was directed that the interim relief of Rs.750/- per month would be continued to be paid till payment of final compensation. This was followed by a further order dated 12.10.1995 giving directions with regard to disbursement of interim compensation for death claims. A true copy of the order dated 12.10.1995 of this Hon'ble Court is annexed herewith and marked as **Annexure-P/5**.

3.13 By order dated 2.3.2001 passed by this Hon'ble Court in W.P.(Civil) No. 415 of 2000 (Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India) this Hon'ble Court gave directions for restoration of certain claims which had been closed by the office of the Welfare Commissioner on the ground that the Claimants had not pursued the case. A true copy of the said order dated 2.3.2001 in

W.P.(C) No.415/2000 is annexed herewith and marked as **Annexure-P/6.**

3.14 The present position as per the records of the office of the Welfare Commissioner which have been made available to the petitioners is that a total of 10,29,431 claims were received upto 31.3.2002 of which 10,29,254 were adjudicated and of these 5,66,786 cases have been awarded compensation. The total amount said to have been disbursed by the office of the Welfare Commissioner upto 31.3.2002 was Rs.1151.51 Crores and the balance available for disbursement was Rs. 1360 crores (Approx.) A true copy of the statement prepared by the financial adviser of the office of the Welfare Commissioner in regard to the claims received and decided and the amount disbursed as on 31.3.2002 is annexed herewith and marked as **Annexure-P/7.**

3.15 A survey conducted by the Health and Documentation Unit of the Sambhavana Trust, a non-profit organization, providing health care to the Bhopal Gas Victims, among the residents of Jaiprakash Nagar a community right opposite the Union Carbide factory and the most severely affected areas by the gas leak disaster of December, 1984 showed that 91% of the Claimants had received minimum compensation of Rs.25,000. A summary of the data dated nil collected during the survey and is annexed and marked as **Annexure-P/8** and the tables on the basis of which the summary is prepared is also annexed herewith and marked as **Annexure-P/9.**

3.15 Table no.2 which is part of Annexure-P/9 indicates that 85% of the claimants who had lodged their claims in the year 1985 received compensation only in 1994-95. In fact none of the claimants who had filed their claims upto 1989 received compensation before 1994-95. Among other Bhopal gas victims have received their compensation even later. This shows the long wait by the victims for receiving compensation. A further view that emerges from the data is revealed by table IV it shows that just in one community in Jaiprakash Nagar, which was most severely affected by the Gas Leak Disaster 01% of the claimants received only Rs.25,000/-. It is on the above basis that interest has been calculated for different periods as shown in table no.5. The bar charts accompanying the tables also starkly bring out the huge gap between guidelines for compensation found in the orders of the Hon'ble Supreme Court and the compensation actually awarded. These statistics amply demonstrate that justice has been denied to the Bhopal gas victims. The bar charts along with table V shows that the amounts already awarded along with interest whether at 12% or 15% would still be much less than the maximum compensation as suggested in the guidelines under the orders of this Hon'ble Court.

3.16 The above summary of tables of the data collected during the Survey of just one severely

effected ward in Bhopal shows the grave injustice done to the victims of Bhopal gas disaster and how most of them have been denied a just and fair compensation.

3.17 The Petitioners their groups representing them have been making several representations to the Union of India and the Government of Madhya Pradesh that the balance amount lying undistributed from the compensation paid by Union Carbide Corporation should be distributed amongst the victims whose claims have been processed and settled. The Respondent Government have remained indifferent to these requests.

3.18 That with' no response forthcoming from the respondents, the petitioner has no efficacious or alternative remedy except to approach this Hon'ble Court for seeking relief as prayed for in the Writ Petition.

3.19 The petitioners are directly approaching this Hon'ble Court under Constitution of India since the subject matter of the present petition arises from the earlier order of this Hon'ble Court reported in (1989) 1 SCC 674 recording the settlement arrived at between the Union Carbide Corporation and the Union of India, and the order of this Hon'ble Court reported in (1991) 4 SCC 584 upholding the settlement arrived at in so far as the civil liability of Union Carbide Corporation was concerned and several consequential orders passed thereafter from time to time. the issues in the present petition are of substantial public interest affecting the Bhopal gas victims as a whole.

3.20 In the interest of finality and expeditious, resolution of issues raised in this petition it would be in the interests of justice for this Hon'ble Court to entertain the present writ petition and grant the relief.

4. That the petitioners have not filed any other writ petition earlier in this Hon'ble Court and beg to prefer the present writ petition on inter alia the following grounds which are taken without prejudice to one another:

GROUNDS

- A) The petitioner submits that the compensation amount of 4790 million US Dollars paid by the Union Carbide Corporation (UCC) towards settlement of the civil dispute on behalf of the victims of the Bhopal gas disaster was directed to be kept in a separate account of this Hon'ble Court to be used exclusively for the purposes of compensating the victims. The settlement was approved by this Hon'ble Court in the expectation that its rupee equivalent would be sufficient to meet the claims of the victims whose numbers were quantified on the basis of assessment made at the time of settlement. It is clear that the compensation money was being held by the Union of India in trust for the victims and there was no question of utilising this money for any other purpose. In the aforementioned circumstances the fact that after the purported settlement of accounts of the claimants over a period of 18 years, the Union of India has still a sum of Rs. 1360 crores of the said compensation amount lying undisbursed as on 31.3.2002 points to the fact that many of the victims have received neither fair nor just nor adequate compensation. As pointed out in the petition most of the victims have been denied fair and just compensation. It is submitted that the Union of India and the other respondents are jointly and severally liable in law to ensure that the undisbursed amount of compensation lying in an account in the Reserve Bank of India is distributed pro-rata among the Bhopal Gas Victims whose claims have been processed and/or settled.
- B) The Petitioner submits that the retention by the Union of India of the undisbursed amount to the tune of over Rs. 1360 crores as on 31.3.2002 is wholly arbitrary, unreasonable and violative of the fundamental rights of the Bhopal Gas Victims under Article 14 and 21 of the Constitution of India. It is submitted that for many years now the Bhopal Gas Victims continued to

suffer the destructive effects of the Gas Leak that took place on December 2/3, 1984. They have been denied any interest on the compensation amount paid. Further as by records of the case show many of them have been denied a just and fair compensation. The continued denial of these victims, whose claims have been processed and settled, the balance amount of compensation to which they are legitimately due constitutes a gross denial of justice. The respondents while being held jointly and severally liable for these unjustified illegal act, ought to be directed by this Hon'ble Court by appropriate rights to ensure complete pro-rata distribution of the balance compensation amount amongst the victims whose claims have been processed and settled in terms of the Claims Act.

- C) The Petitioner submits that notwithstanding and without prejudice to the above contentions each of the victims is also entitled in law to be paid interest on the compensation amount awarded and in this context the following submissions are made for the kind consideration of this Hon'ble Court.

- D) The petitioners submit that the Bhopal gas disaster is widely acknowledged as one of the worst ever disasters in the history of industrialized world and for which no adequate compensation has still been paid to any of the victims of the said disaster. Despite of the passage of 18 years since the occurrence of the disaster, a substantial number of victims remain to be compensated in accordance with the due process of law. The compensation amounts awarded in individual claims have been far too meagre by any rational standard and are far too inadequate to compensate for the actual loss suffered by individual claimant. In these circumstances, the denial of interest on the compensation amount awarded to the victims amounts to gross discrimination and also renders the compensation amount paid grossly inadequate. The denial of interest tantamounts to denial of payment of just and fair compensation to

the victims of Bhopal Gas disaster and accordingly it is violative of their fundamental rights under Articles 14 and 21 of the Constitution of India.

- E) The petitioners submit that the Bhopal gas disaster is an extraordinary tragedy and it continues to create victims till today. Many of the victims of the disaster have remained unacknowledged. Victims whose claims have been processed under the Claims Act, which have manifested at a later point in time, have not been acknowledged and accounted for awarding compensation. Further, the basis on which this Hon'ble Court approved the settlement arrived at between the Union of India and the tortfeasor, Union Carbide Corporation (UCC) is in actual practice being either wholly deterred or not complied with at all. In other words, the actual amounts of compensation awarded in individual claims have been far less than the minimum amount of compensation which was contemplated to be paid for the different categories of victims or the claimants arising out of death or claims for various kind of injuries. The denial of interest on the amount of compensation further compound unjustness and unreasonableness of the compensation awarded to the victims of Bhopal gas disaster.
- F) The petitioners submit that in all statutes concerning the payment of compensation for injuries, whether it is the Motor Vehicles Act, 1988 or the Workmen's Compensation Act, 1923 or the Railway Accident Claims Tribunal Act, 1987, contain a provision for payment of interest on the compensation awarded. However, the Bhopal Gas Disaster (Processing of Claims) Act is unique in that it contains no provision for payment of interest. The absence of provisions under the Claims Act for the payment of interest, is, in the submission of the petitioners, highly discriminatory and violative of Article 14 of Constitution of India. There is no rational basis for denying the victims of the Bhopal Gas disaster interest on the compensation amount to which they

are entitled in law.

- G) The petitioners submit that the Claims Act cannot render the position of victims worse off than they would have been if they had pursued their remedy in the civil court by way of a suit for damages. Each of the victims would have been entitled to payment of interest on the amount awarded as damages. If the Claims Act is read as permitting the denial of interest to the gas victims it will be rendered unconstitutional and illegal. The petitioners submit that notwithstanding the absence of a provision under the Claims Act for the payment of interest, the Interest Act, 1978 would still entitle the victims of Bhopal Gas tragedy to the interest on the compensation amount payable under the Claims Act. Section 2(a) of the Interest Act defines a Court to include a tribunal and this would include the Claim Tribunals constituted under the Claims Act. However, there is no provision under the Claims Act which expressly exclude the applicability of Interest Act, 1978. Therefore, in terms of section 3 of the Interest Act, 1978, each of the victims of the Bhopal gas disaster whose claims have been processed and compensation amounts awarded under the Claims Act, are entitled to be paid interest by virtue of Section 3 read with section 4 of the Interest Act, 1978.
- H) The petitioners further submit that each of the victims of the Bhopal Gas disaster whose claims have been processed and compensation has been awarded under the Claims Act are entitled to be paid interest at the rate that was allowed as per the provisions of Interest Act, 1978 and for the period from the date of Bhopal gas disaster Le. 2/3.12.1984 till the payment of final compensation. This is consistent with the established practice under other enactments that concern the payment of compensation to the victims of accident including the Motor Vehicles Act, 1988, the Workmen Compensation Act, 1923 and the Railway Claims Tribunal Act, 1957.

- I) The petitioners submit that there has been a considerable delay in the disposal of the claims filed by the Bhopal gas victims by the Tribunals constituted under the Claims Act. Even 18 years after the gas disaster, there are over 2000 claimants still awaiting decision even at the first instance that is before the Dy. Welfare Commissioner who functions as a Tribunal under the Claims Act. The victims of Bhopal gas disaster are in no way responsible for the delay and therefore, ought not to be saddled with the delay arising out of the unconscionable delay over 18 years in settlement of claims. A large number of victims have begun receiving the compensation in regard to the claim nearly 10 years after the disaster. It is unfair and unreasonable to expect the victims of Bhopal Gas disaster to be able to survive for this long a period without any means of sustenance and this is yet another reason why the payment of interest on the compensation amount awarded to the victims becomes imperative if justice has to be done to the victims. As already pointed out in para 3.15.2, over 90% of the Claimants have received only Rs. 25,000/- as final compensation. Also the actual amounts of compensation awarded have been far too less when compared to the actual figures suggested in the orders of this Hon'ble Court. These have been amply brought out in the tables and charts which form part of Annexure-P/9 to the Writ Petition. The long wait for compensation underscores the need to acknowledge the dire need of the victims to be able to survive during this period. Accordingly different periods and at 12% and 15%. Even if the maximum interest as calculated is awarded, the tables and charts show that this will be far less than the actual figures arrived at by this Hon'ble Court. In other words there is no impediment in law or on facts, to ensure that the balance amount of compensation lying in the account should be made over to the victims of the Bhopal Gas Disaster and not be 'utilised for any other purpose.

- J) The petitioners submit that the account of payment of interim relief on monthly basis to each of the victims pending disposal of their individual claims pursuant to the orders of this Hon'ble Court have been stopped since 1996. In any event the payment of interim relief continued only till the disposal of the claims by the Dy. Welfare Commissioner. Further the amount of interim relief paid was deducted at the time of payment of final compensation. As a result many of the victims got far too meagre sums as compensation after settlement of their claims. In these circumstances, the denial of interest on the sum awarded has reduced the compensation actually received to a wholly illusory and far too inadequate sum in relation to the actual loss suffered by the victims of Bhopal gas disaster.
- K) It is submitted that the respondents are jointly and severely answerable in law to this Hon'ble Court for their wholly illegal and arbitrary action of retaining over Rs. 1360 crores of the compensation amount without disbursing the same to the victims of the Bhopal gas disaster. The holding of the said money by the respondents is entirely without the authority of law, more particularly since the said moneys are owing and payable to the victims of the Bhopal gas disaster. Neither of the first and second respondents can lay any claim to the compensation money since they are holding it in trust for the victims of the Bhopal gas disaster. In execution of the settlement arrived at between the tortfeasor, Union Carbide Corporation and the Union of India, the entire compensation amount is required to be utilized only towards the compensation payable to the victims of the Bhopal gas disaster and for no other purpose. This makes it imperative that this Hon'ble Court should by a writ of mandamus direct that the undisbursed sum of compensation amount lying under the control of respondents should be utilized towards the payment of interest on the compensation amount awarded to the victims of Bhopal gas disaster.

- L) The petitioners submit that notwithstanding the above, if the compensation amount remaining undisbursed is inadequate to make the payment of interest amount on each of the individual claims of the victims, the balance amount towards interest should in any event be paid by the respondents since they are liable jointly and severally for denying the payment of interest to the victims for a period of nearly 18 years after the gas disaster. It is unfair to expect the victims to bear the cost of surviving the gas disaster for nearly 18 years without just and adequate compensation.
- M) The petitioners submit that the entire basis on which this Hon'ble Court upheld the settlement arrived at between the tortfeasor, Union Carbide Corporation and Union of India in the judgment in the writ petition reported in (1991) 4 SCC 581, was that the compensation proposed to be awarded in terms of the settlement to the victims would be just, fair and reasonable. The very basis of the judgment of this Hon'ble Court now stands disproved with the victims of the Bhopal gas disaster being awarded far too meagre compensation amounts which are nowhere near the minimum amount which was contemplated to be paid in different categories at the time of settlement. The only manner in which each of the victims could be given some semblance of a reasonable compensation as contemplated by this Hon'ble Court in its decision in 1991 (4) SCC 584 would be by directing that interest be paid on the compensation amount awarded to each of the victims of the Bhopal gas disaster.

The petitioners submit that the respondents are duty bound and answerable in law to furnish accounts to this Hon'ble Court in regard to:

- (a) the exact amount that was realised in Rupees from the compensation of 470 million US Dollars deposited by the Tort Feasor, Union Carbide Corporation pursuant to the settlement recorded on 14.2.1989 and the exact rate or rates

of conversion of the US Dollar into Rupee at various points of time;

- (b) the actual amount utilized towards settlement of claims processed under the Claims Act;
- (c) the amount lying undisbursed; and
- (d) whether any interest has accrued on the settlement amount and the exact amount of interest so accrued.

More importantly the respondents are duty bound to inform this Hon'ble Court whether they have misutilised the compensation amount for purposes other than the settlement of claim processed under the Claims Act. In other words the petitioners apprehend that despite orders of this Hon'ble Court to the contrary, considerable portion of the settlement compensation amount may have been diverted towards administrative and legal expenses attributable to the disaster and loss of revenue to the Government arising out of the disaster. It is submitted that in the event this Hon'ble Court finds that the compensation amount has been misutilised, the respondents may be directed to restore the sum which was so misutilised and further be directed to make the said sum available to be utilized for the compensation for the victims of Bhopal gas disaster.

- N) The Petitioner submits that they are through this petition asserting their right to information in regard to the amounts received and disbursed towards the compensation payable to them as a result of the Bhopal gas disaster. It is submitted that that right to information is inherent in the right enshrined under Article 19 and without which the right to life under Article 21 of the constitution would itself be rendered meaningless particular in the context of facts and circumstances of the present.

- O) The Petitioner submits that this Hon'ble Court ought to hold the respondents jointly and severally liable for committing the breach of public trust reposed in each of them in regard to disbursement of the compensation amount to each of the victims of the Bhopal gas disaster. The authorities were expected to comply with the Constitutional mandate under Article 21 of the Constitution of India read with Articles 14 and 19 thereof and ensure that each of victims receives just and fair reasonable compensation. It is clear from the facts and circumstances outlined in the petition that there has been gross violation of this fundamental right of the victims and the respondents ought to be held liable in law for the same.
- P) The Petitioner submits that the arbitrariness of the entire exercise of adjudication and settlement of the claims under the Claims Act is apparent from the fact that the compensation amount which was expected towards the settlement of the claims in 1989 was based on the figure of 3000 deaths and 30,000 injuries. In other words 470 million U.S Dollars paid by U.C.C. towards the settlement of the claims was seen as adequate for settling 3000 death claims and 30,000 injury Claims. As it now transpires slightly over % of the total amount stated to have accrued has been used to settle as many as 5,61,864 claims which included 5000 death claims that have been paid. The irony of the whole exercise is that despite the actual number of claims settled being far higher than the figures on the basis of which the compensation amount was arrived at, and thought to be "reasonable", an amount of Rs. 1360 crores is still lying undisbursed in the compensation account. This demonstrates the palpable injustice done to the Bhopal Gas Victims both compensation and also denying them interest on the amounts paid despite many of the claims have been settled after a gap of 15 years after the cause of disaster. The entire exercise conducted by the respondent authorities for

adjudicating and settling the claims is arbitrary, unreasonable and violative of the fundamental rights of the victims under Article 14 of the Constitution of India.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) issue an appropriate writ, order or direction declaring that the balance of over Rs. 1360 crores from the compensation amount of Rs. 470 millions US Dollars paid by the Union Carbide Corporation towards the settlement of the claims of the Bhopal Gas victims pursuant to the order dated 14.2.1989 of this Hon'ble Court is liable to be distributed pro-rata amongst the Bhopal gas victims whose claims have been processed and settled in terms of the Bhopal Gas Disaster (Processing of Claims) Act, 1985 and that the retention of the said amount of Rs. 1360 crores without disbursement amongst the victims constitutes a grave violation of their fundamental rights under Article 14 and 21 of the Constitution of India;
- b) Issue a Writ of Mandamus or appropriate writ order or direction in the nature of Mandamus directing the respondents jointly and severally to ensure that the balance amount of over Rs. 1360 crores lying in account with the Reserve Bank of India and under the control of the Union of India be disbursed pro-rata amongst the victims of the Bhopal Gas Disaster, whose claims have been processed and settled in terms of the Bhopal Gas Disaster (Processing of Claims) Act, 1985; and
- c) issue an appropriate writ, order or direction declaring that the denial of payment of interest to the victims of Bhopal gas disaster on the compensation amounts payable under the individual claims processed under the Bhopal

Gas Disaster (Processing of Claims) Act, 1985 is arbitrary, discriminatory and violative of the fundamental rights of the Bhopal gas victims under Articles 14 and 21 of the Constitution of India;

- d) issue an appropriate writ, order of direction in the nature of mandamus declaring that notwithstanding the absence of a specific provision under the Claims Act for the payment of interest on the compensation awarded under the individual claims processed therein, each of the victims of the Bhopal gas disaster, whose claim has been processed is entitled for the payment of interest on the compensation amount awarded as per the provisions of the Interest Act, 1978;
- e) issue a writ of mandamus or an appropriate writ, order of direction in the nature of mandamus directing the Respondents NO.1 to 3 jointly and severally to render full accounts, in terms of ground (L) of this Petition, to this Hon'ble Court in regard to the compensation amount of 470 millions US Dollars ..deposited by the Union Carbide Corporation towards settlement of the claims of the victims of the Bhopal Gas Disaster;
- f) issue a writ of mandamus or an appropriate writ, order of direction in the nature of mandamus directing the respondent Union of India and the State of Madhya Pradesh to jointly and severally pay each of the victims of the Bhopal gas disaster whose claim has been processed and settled under the Claims Act, interest on the compensation awarded therein as per the provision of the Interest Act, 1978 from the date of disaster i.e. 2/3.12.1984 till payment of amount of compensation from the settlement amount deposited pursuant to the order dated 14.2.1989 passed by this Hon'ble Court reported in 1989 (1) SCC 674 and produce accounts for the amount released, disbursed and remaining to be disbursed,

- g) award costs of this petition; and
- h) pass any other or further orders as may be deemed fit and proper in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL EVER DUTY BOUND.

DRAWN AND FILED BY

(S. Muralidhar)
Advocate for the Petitioners

New Delhi
Filed on: 05.03.2003

