

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9874/2012

(From the judgement and order dated 05/03/2012 in WP No.2802/2004 of The HIGH COURT OF M.P AT JABALPUR)

UNION OF INDIA

Petitioner(s)

VERSUS

ALOK PRATAP SINGH & ORS.

Respondent(s)

(With appln(s) for modification of Court's Order dated 04.04.2012 and for exemption from filing O.T. and permission to file impleadment and direction and office report)

Date: 18/02/2013 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s)

Mr.Paras Kuhad, ASG  
Mr.Sahil Tagotra, Adv.

For Respondent(s)

Mr.Ravi Shankar Prasad, Sr.Adv.  
Mr.P.S.Patwalia, Sr.Adv.  
Mr.Sunny Chaudhary, Adv.

Mr.Sanjay Parikh, Adv.  
Ms. Mamta Saxena, Adv.  
Mr.Bushra Parveen, Adv.

For CPCB

Mr.Vijay Panjwani, Adv.

For Applicants

Ms.Karuna Nundy, Adv.  
Mr.Abi Singh, Adv.

Mr. Santosh Kumar, AOR

UPON hearing counsel the Court made the following  
O R D E R

We have gone through affidavit dated 11.02.2013 of Shri Mukesh Varshney, Commissioner, Bhopal Gas Tragedy Relief and Rehabilitation Department, Government of Madhya Pradesh. In paragraph 5 of the affidavit, Shri Mukesh Varshney has made the following statements:

"5. The objections of the State of M.P. to the report dated 27/28.01.2013 submitted by Central Pollution Control Board(CPCB) are as follows:

(a) The Group of Ministers (GOM) reconstituted to examine all issues relating to Bhopal Gas Leak Disaster in its meeting held on 22.10.2012 in paragraph 6 accepted the recommendation of the Secretary, Environment and forests, and Member Secretary, Central Pollution Control Board (CPCB) to conduct a trial/rest run at TSDf, Pithampur with other similar waste in order to determine the feasibility and technical capability of the TSDf, Pithampur to dispose 350 M.T. of toxic waste lying at UCIL premises by the method of incineration. A

true copy of the minutes of the meeting dated 22.10.2012 of Group of Minister (GoM) is marked and filed as Annexure A-2.

(b) That the Central Pollution Control Board (CPCB) in total defiance of the minutes of the meeting dated 22.10.2012 of Group of Minister (GoM) conducted the trial/test run at TSDF, Pithampur with the industrial waste instead of toxic waste similar to the waste lying at the UCIL factory in Bhopal. The Union of India in its four supplementary affidavit dated..... in paragraph 3 has categorically admitted that the trial/test run at TSDF, Pithampur was being conducted with industrial waste instead of similar toxic waste lying at UCIL factory in Bhopal. A true copy of supplementary affidavit dated.... filed by Union of India is marked and filed as Annexure A-3.

(c) The toxic waste lying at UCIL factory in Bhopal is a chemical waste contenting pesticides which is categorized as Hazardous Waste in entry No. 29 in Schedule 1 of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008.

(d) The industrial waste which has been used by the Central Pollution Control Board (CPCB) for conducting the trial/test run at TSDF, Pithampur comprised of paint sludge oil soaked cotton ETP Sludge and Pharmaceutical waste categorized under entries 5.21, 28 of Schedule 1 of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 which is totally different from the chemical toxic waste lying at UCIL factory premises in Bhopal as well as the waste indicated in paragraph 6 of the minutes of the meeting of the GoM dated 22.10.2012.

(e) In view of the fact that the trial/test run at TSDF, Pithampur has been conducted with totally different waste in defiance of the minutes of the meeting dated 22.10.2012 and considering the fact that the waste with which the trial run was conducted was totally different from the chemical toxic waste lying at UCIL factory in Bhopal, the report dated 27/28.01.2013 submitted by the CPCB may not be accepted by this Hon'ble Court as the report did not present the clear picture with regard to the technical capability of facility in Pithampur, State of M.P. for disposing the toxic waste.

ii) Reasonable apprehension of danger to the life and limb of people leaving in near vicinity of TSDF, Pithampur.

(a) The facility in Pithampur/State of M.P. is surrounded by habitation of people which may be exposed to the side effect of gases/fuels which may release while incinerating the toxic waste of UCIL factory in Bhopal.

(b) The Tarapura village comprising of 105 houses is only 250 meters away from the premises of the TSDF facility Pithampur and the people leaving in this village need to be relocated before conducting incinerating the Bhopal Gas toxic waste which is highly hazardous nature considering its composition. A true copy of the Google Map showing the location of the TSDF Pithampur, State of M.P. is marked and filed as Annexure A-4

(c) Within the distance of two-three kilometers from TSDF, Pithampur there is developed industrial sector and if any

misshaping take place while incinerating the Bhopal Gas toxic waste it will adversely affect the industrial sector also and the people working in the industries.

(d) This Hon'ble Court in its order dated 11.05.2012 passed in the abovementioned matter while deferring implementation of the earlier order dated 04.04.2012 took note of the possible adverse impact on the people leaving the site at Pithampur. A true copy of the order dated 11.05.2012 passed by this Hon'ble court in I.A. No.2-3 in SLP(C) No.9874 of 2012 is marked and filed as ANNEXURE A-5.

(e) In view of the fact that the trial/test run conducted at TSDF, Pithampur has been conducted with the waste which is totally waste from Bhopal Gas toxic waste it will be in the interest of all the parties and the public at large leaving nearby TSDF, Pithampur that again a trial/test run the conducted at Pithampur facility with the other similar waste as decided by the Group of Minister (GoM) in its meeting held on 22.10.2012.

iii) Technical Parameteres not satisfied by TSDF, Pithampur:

(a) The Madhya Pradesh Pollution Control Board (MPPCB) closely monitored the performance of TSDF, Pithampur during the trial/test run conducted with the industrial waste from 02.12.2012 to 8.12.2012 and 01.12.2013 to 15.01.2013.

(b) The Madhya Pradesh Pollution Control Board (MPPCB) prepared an ambience analysis report of the performance of TSDF, Pithampur during the trial/test run conducted with the industrial waste from 03.12.2012 to 08.12.2012 and 01.12.2013 to 15.01.2013 and found that the suspended particulate matter during the test run of the industrial waste exceeded the permissible limit. A copy of the analysis report of Madhya Pradesh Pollution Control Board (MPPCB) from 3.12.2012 to 8.12.2012 and 01.12.2013 to 15.01.2013 is marked and filed as ANNEXURE A-6.

(c) In view of the fact that the suspended particulate matter exceeded the permissible limit during the trial/test run conducted at TSDF, Pithampur of the industrial waste which is totally different from Bhopal Gas toxic waste, it can be safely presumed that the facility is not technically sound for incineration of the Bhopal Gas toxic waste.

(d) Even the Central Pollution Control Board (CPCB) in its report dated 27/28.01.2013 in paragraph 1 has stated that the performance of the incinerator was improved by enhancing the feed of activated carbon. This finding of CPCB clearly shows that the facility at Pithampur is not technically sound for incineration of the Bhopal gas toxic waste which is more hazardous in comparison to industrial waste.

iv) The State of M.P. most respectfully submits that from the report dated 27/28.01.2013 it is quite apparent that during the trial run increase in stack emission of Hydrogen Chloride, Carbon Monoxide, Carbon Dioxide has been noticed which requires for observation of the facility at Pithampur for some longer time as the trial run which was conducted for three days (12.01.2013 to 15.01.2013) has shown many variations in the stack emission. Therefore before taking final decision of

incineration of Bhopal Gas toxic waste TSDF, Pithampur it is necessary that a complete and concrete report shall be placed before this Hon'ble Court regarding the technical capability of the facility.

v) No information about the other 21 incinerators:

(a) The Ld. Solicitor General of India through his letter which found mentioned in paragraph 7 of the minutes of the meeting dated 22.10.2012 of GoM has suggested the Secretary, Environment and Forest, Government of India to identify the other 21 incinerators and list them on the basis of technical capabilities with preference being given to technically most competent incinerators for disposing of the toxic waste.

(b) The Union of India in its fourth supplementary affidavit has stated that they are examining the technical capabilities of others 21 incinerators for the disposal of the Bhopal Gas toxic waste but in the present/fifth supplementary affidavit no status of the 21 incinerators has been given by the Union of India.

vi) The CPCB in Annexure III of its report dated 27/28.01.2013 has burdened the State of Madhya Pradesh with the cost of packaging, transportation and incineration of 10 tonnes of UCIL waste which is contrary to paragraph 6 of the Minutes of the Meeting dated 22.10.2012 of the GoM wherein it was decided that the CPCB will carry out the test incineration."

The learned Additional Solicitor General gave out that the officers of the Central Pollution Control Board and the concerned Ministry will get in touch with all the industries to ascertain whether 10 tonnes of waste like the one lying at Union Carbide Waste is available in any of the industries.

Shri Prasad, learned senior counsel appearing for the State of Madhya Pradesh also submitted that the concerned officers of the State would also get in touch with these industries to ascertain the availability of waste similar to Union Carbide Waste.

List the case on 25.02.2013.

To facilitate the availability of adequate quantity of waste substantially similar to the Union Carbide Waste, we request the senior officers of private industries to render full co-operation to the officers of the Union Government and the State of Madhya Pradesh.

(Parveen Kr. Chawla)  
Court Master

(Phoolan Wati Arora)  
Court Master