

Dt
ITEM NO.3

COURT NO.1

SECTION PIL

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

I.A. NOS.23, 40, 42, 43, 55, 56 & 57, 63, 64 & 65
IN
W.P.(C) NO.657 OF 1995

RESEARCH FOUNDN. FOR SCIENCE

Petitioner(s)

VERSUS

U O I & ANR.

Respondent(s)

(With appln(s) for directions, clarification, impleadment and
office report)

WITH S.L.P.(C) NO.16175 of 1997
(With appln.(s) for ex-parte stay)
(For final disposal)
Civil Appeal NO.7660 of 1997
(With office report)
(For final disposal)
CONMT.PET.(C) NO.155 of 2005 in W.P.(C) NO.657/1995
(With appln.(s) for directions and office report)
(For final disposal)

Date: 06/11/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. Sanjay Parikh, AOR
Ms. Mamta Saxena, Adv.
Mr. A.N. Singh, Adv.
Ms. Bushra Parveen, Adv.

SLP 16175/97 Ms. B. Vijayalakshmi Menon, AOR

CA 7660/97 Mr. P. Parmeswaran, AOR

By Post

For Respondent(s) Mr. P.P. Malhotra, ASG
Mr. Shalinder Saini, Adv.
Mr. S.N. Terdal, Adv.
Ms. Sukhbeer Kaur Bajwa, Adv.
Mr. A.K. Sharma, AOR

Ms. Hemantika Wahi, AOR
Ms. Jesal, Adv.
Mr. S. Panda, Adv.
Ms. Nandini Gupta, Adv.

Mr. Manish Kr. Bishnoi, AOR

Ms. Meenakshi Vij, AOR

Ms. Karuna Nundy, Adv.

Ms. Aparna Bhat, AOR
Ms. Anitha Shenoy, AOR
Mr. Mohan Parasaran, ASG
Mr. D.L. Chidanand, Adv.
Ms. Asha G. Nair, Adv.
Mr. D.S. Mahra, AOR

For Customs
Department

Mr. Arijit Prasad, Adv.
Mr. T.A. Khan, Adv.
Mr. F. Rasheed, Adv.
Mr. B.K. Prasad, AOR

Mrs. Jayashree Wad, Adv.
Mr. Ashish Wad, Adv.
Mrs. Tamali Wad, Adv.
Ms. Kanika Bhutani, Adv.
Mr. Aditya Gupta, Adv.
for M/s. J.S. Wad & Co.

Mr. C. Mukund, Adv.
Mr. Ashok Jain, Adv.
Mr. Pankaj Jain, Adv.
Mr. Bijoy Kr. Jain, AOR

For OSPCB

Mr. A.K. Panda, Sr. Adv.
Mr. Rutwik Panda, AOR

Mr. P.S. Sudheer, AOR

Mr. A. Ragunath, AOR

For State of MP Ms. Vibha Dutta Makhija, AOR

For CPCB

Mr. Vijay Panjwani, AOR

For SCMC

Mr. Raj Panjwani, Sr. Adv.

For IITR

Mr. Praveen Swarup, Adv.
Mr. R.K. Singh, Adv.

CA 7660/97

Mr. K.K. Gupta, AOR

CA 7660/97

Mr. Pramod Dayal, AOR

CA 7660/97

Mr. Sushil Kumar Jain, AOR

CP 155/05

Mr. M.J. Paul, AOR

CP 155/05

Mr. Sudarsh Menon, AOR

For Director
Environment, Goa

Mr. Bhavanishankar V. Gadnis, Adv.
Mr. A. Raghunath, AOR

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

On 25th September, 2012, we had dealt with various aspects of the problem relating to contamination of the ground-water in and around the Union Carbide Factory in Bhopal in Madhya Pradesh and regarding the supply of potable drinking water to the inhabitants of Wapi and Ankaleshwar in Gujarat, as also the breaking of vessels and the release of toxic wastes therefrom.

Three issues have been identified as far as the Bhopal matters are concerned. The first issue is with regard to the

drilling work within the factory premises for the purpose of taking samples from the soil to determine the level of contamination of the ground-water underneath and around the factory premises. In fact, eighteen areas had been identified where such contamination has taken place and, today, we are informed by Mr. Sanjay Parikh, learned counsel appearing for the petitioner-Foundation, four other areas have also been identified since then.

The second issue is with regard to the supply of potable drinking water by the Bhopal Municipality Corporation to the inhabitants of these areas through pipe lines. The third issue is with regard to the removal of toxic wastes, which continue to pollute the ground-water in these areas and other new places as well.

As far as the first issue is concerned, we are informed by learned counsel appearing for the Indian Institute of Toxicology Research (IITR), Lucknow, that the drilling work could not be completed and that some more time is required for the purpose of filing a final report. Since the final report is dependent on such further drilling work, we have no other option, but to allow time for the same. However, the matter has to be concluded at an early date because the various issues involved depend on the Report to be filed by the IITR. Although, the interim Report filed by the IITR indicates that the ground-water is not suitable for drinking purposes, the possibility for such water to be used for other purposes, should also be explored. As suggested by Ms. Vibha Datta Makhija, learned counsel appearing for the Municipal Corporation, Bhopal, while preparing its Final Report, the IITR should take into consideration the reasons for and the level of contamination of the ground-water. Mr. Vijay Panjwani, learned counsel appearing on behalf of the Central Pollution Control Board, reiterated the suggestions made by Ms. Makhija. Similar submissions have been made on behalf of the petitioner by Mr. Sanjay Parikh, and also on behalf of the Bhopal Group for Information and Action, Bhopal, by Ms. Karuna Nundy, learned Advocate.

The Institute is, accordingly, directed to provide such details in the final Report.

As indicated herein-above, the next issue is with regard to the supply of potable drinking water. According to Ms. Vibha Datta Makhija, the project is almost near completion, and the only problem being faced today by the Municipality is with regard to the extension of the pipe line for such drinking water into the premises of the individual site holders. Needless to say, in the event such benefit has been extended to some of the site holders of the eighteen colonies identified so far, such benefit would be equally available to the other inhabitants of the said colonies.

As far as the four newly identified areas are concerned, the same may also be taken up by the Municipality, since the question of contamination of the ground-water would apply to those areas also.

With regard to the third issue, we are informed that another Bench of this Court is in seisin of the matter and directions have been given from time to time with regard to the removal of toxic wastes. That being the position, we refrain from making any observations with regard to the same. However, as has been pointed out by Ms. Nundy, there are areas where the pipe line supplying drinking water is in close proximity with the drainage and sewerage system. As there is every likelihood of contamination on account of the above, the Municipality should take steps to see that in such cases the pipe lines are removed, if required, so that they are no longer close to such sewerage and drainage lines in order to

maintain the purity of the water to be supplied for drinking purposes to the inhabitants of the areas.

Since a Committee has been appointed by this Court with the Executive Chairman of the Madhya Pradesh State Legal Services Authority as the Chairperson, the said Committee is also requested to look into these aspects of the matter and to submit a separate report in addition to the report to be submitted by the IITR.

The Member Secretary of the Madhya Pradesh State Legal Services Authority should be present in Court with necessary records on the next date of hearing.

While submitting their Report, both the IITR as well as the Committee, may look into the earlier Reports, which had been filed for whatever they are worth.

Regarding the supply of drinking water to the contaminated areas in Wapi and Ankaleshwar in Gujarat, an affidavit has been filed on behalf of the State of Gujarat, indicating that potable drinking water is being supplied to the areas mentioned in the affidavit through pipe lines. An affidavit has been filed on behalf of the petitioner-Foundation to the effect that some of the villages appeared not to have been supplied with such drinking water facilities.

Be that as it may, the State of Gujarat may look into and consider the reply affidavit filed on behalf of the petitioner-Foundation and the issues raised therein and take steps accordingly.

With regard to the question involving the payment of incineration charges of the waste oil, it appears from a copy of a letter written by the Deputy Commissioner of Customs, SIIB (Import), JNCH, dated 5th November, 2012, produced by learned counsel for the Customs Authorities, that none of the defaulters, namely, M/s. Hindustan Trading Corporation, M/s. Central Steel & General Industries, M/s. Jairaj Ispat Ltd. and M/s. Sainath Enterprises, have deposited the incineration charges till 31st October, 2012. However, it is submitted by Ms. Jaishree Wad, learned counsel appearing for all the four aforesaid Companies, that since an objection had been raised by them with regard to the amounts payable towards incineration charges, the amounts as demanded by the Customs Authorities, have not been paid. Since the matter has been adjudicated by the Customs Authorities, nothing further remains to be decided as to the amounts which are payable by the four aforesaid Companies and the amounts now being demanded as balance amount, will be required to be paid within a month of the Customs Authority supplying to the said four Companies, the details of the amount of waste oil already incinerated and covered by the amount deposited earlier and the details of the balance amount, which are still payable towards incineration charges. Such information should be provided to the said four Companies within two weeks from date.

Ms. Meenakshi Viz, learned counsel, who had appeared for M/s. Ludhiana Refineries Industry and had indicated that the Company was ready and willing to pay the balance amount, if not already paid, is not present today to indicate whether such payments have been made. Similarly, learned counsel for the Customs Authority is not in a position to give any details, since no instructions have been received by him.

As to the four defaulters mentioned in paragraph 9 of our order of 25th September, 2012, one of the alleged defaulters, M/s.

Valley International, is represented in Court today and it has been submitted that whatever amounts had been demanded by the Customs Authorities, had been paid as far back as in February, 2010. An affidavit to that effect has already been filed.

Notices which had been served on the other three defaulters, have been returned with the remarks "left". The petitioner-Foundation may make inquiries as to where the said defaulters can be located, so that they can be made to comply with the orders for payment of the incineration charges, as directed earlier.

Let this matter appear on 22nd January, 2013, to enable the Indian Institute of Toxicology & Research, Lucknow, to file its report in terms of this order. The Committee appointed by this Court is also requested to file its report on the next date.

Let a copy of this order be communicated to the Committee by the learned Advocate-on-Record for the petitioner-Foundation, within this week.

The Union of India is also directed to file its response to I.A. No.63, filed on behalf of the petitioner-Foundation. I.A. No.23 of 2005, filed by M/s. Shiv Priya Overseas (P) Ltd., will also be taken up on the next date.

If any note is submitted on behalf of the petitioner-Foundation regarding the issues to be taken up for consideration on the next date, the same may be circulated to the Hon'ble Judges.

|(Chetan Kumar)
|Court Master

|(Indu Satija)
|Court Master

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