

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

PUBLIC INTEREST LITIGATION No. ____/2011

*IN THE MATTER OF DISPOSAL OF TOXIC WASTE LAYING AT
THE DEFUNCT UNION CARBIDE PLANT IN BHOPAL, BY THE
DRDO AT ITS NAGPUR PLANT*

- PETITIONER:**
1. Shri Devendra s/o Gangdhar Fadnavis
Aged major, Occ. M.L.A.
r/o Dharampeth, Nagpur
 2. Vidarbha Environmental Action Group
Through its Convenor,
Sudhir s/o daulatram Paliwal Aged: 57
years, R/o 157 Triveni Ramdaspath,
Nagpur 440010
 3. Janmanch
Through its general Secretary
Shri Rajiv Jagtap
r/o Premium Plaza, Dharampeth
Nagpur

VERSUS

- RESPONDENT:**
1. Union of India
Through Secretary Ministry of Defence
North Block
New Delhi
 2. Union of India
Through Secretary Ministry of
Environment and Forest
Paryavaran Bhavan
New Delhi
 3. Union of India
Through Secretary Ministry of
Chemicals and fertilizers
Shastri Bhavan, New Delhi
 4. Central Pollution Control Board
Parivesh Bhavan East Arjun Nagar
Shahadara, Delhi-110032

5. State of Maharashtra
Through Secretary Ministry of Home
Mantralaya, Mumbai-32
6. State of Maharashtra
Through Secretary Ministry of
Environment
Mantralaya, Mumbai-32
7. State of Madhya Pradesh
Through Principal Secretary Home
Bhopal (M.P.)
8. Maharashtra State Pollution
Control Board through Member
Secretary
Mumbai
9. Maharashtra State Pollution Control
Board through Regional Officer
5th Floor Udyog Bhavan
Civil Lines Nagpur
10. National Environmental Engineering
Research Institute,
Through its Director
Wardha Road, Nagpur
11. Nagpur Municipal Corporation
Through Municipal Commissioner
Civil lines Nagpur
12. Special Inspector General of Police
Nagpur Range,
Sadar Nagpur

**WRIT PETITION UNDER ARTICLE 226 AND 227 OF THE
CONSTITUTION OF INDIA**

TO,

THE HON'BLE CHIEF JUSTICE

OF HIGH COURT OF JUDICATURE AT BOMBAY AND HIS

COMPANION PUISNE JUSTICES OF BOMBAY HIGH COURT

AT NAGPUR BENCH

THE HUMBLE PETITIONER OF THE PETITIONER

RESPECTFULLY SHOWETH

The petitioner humbly and most respectfully submits as under:

1. The petitioner No.1 is the elected representative of the people and is Member of Maharashtra Legislative Assembly. The Petitioner No. 2 is a group of citizens essentially working for the prevention of environmental degradation of Vidarbha due to unplanned industrialisation, deforestation, diversion irrigation water for non irrigation purposes. The petitioner No.3 are .The petitioners are invoking the extra-ordinary writ jurisdiction of this Hon'ble Court under article 226 and 227 of the Constitution of India in public interest against transport of highly toxic waste to Nagpur within 10 days from the date of the order passed by the Madhya Pradesh High Court. The petition also raises issues as regard to the harmful effects and environmental harm which would be the consequence of such transport on the residents and the ecology of the Nagpur City.

2. At this juncture it is important to state the factual account of the Bhopal Gas Tragedy; The Union Carbide India Ltd(UCIL). Factory was built in 1969 to produce the pesticide Sevin {Union Carbide Corporation's (UCC) brand name for [carbaryl](#)} using Methyl Isocyanate (MIC)

as an intermediate. An MIC production plant was added in 1979. During the night of December 2–3, 1984, water entered a tank containing 42 tons of MIC. The resulting [exothermic reaction](#) increased the temperature inside the tank to over 200 °C (392 °F) and raised the pressure. The tank vented releasing toxic gases into the atmosphere. The gases were blown by north-westerly winds over Bhopal. At the time, workers were cleaning out a clogged pipe with water about 400 feet from the tank. The operators assumed that owing to bad maintenance and leaking valves, it was possible for the water to leak into the tank. However, this water entry route could not be reproduced. UCC also maintains that this route was not possible, but instead alleges water was introduced directly into the tank as an act of sabotage by a disgruntled worker via a connection to a missing pressure gauge on the top of the tank. Early the next morning, a UCIL manager asked the instrument engineer to replace the gauge. UCIL's investigation team found no evidence of the necessary connection; however, the investigation was totally controlled by the government denying UCC investigators access to the tank or interviews with the operators. The 1985 reports give a picture of what led to the disaster and how it developed, although they differ in details.

Factors leading to the magnitude of the gas leak include:

- Storing MIC in large tanks and filling beyond recommended levels
- Poor maintenance after the plant ceased MIC production at the end of 1984
- Failure of several safety systems (due to poor maintenance)
- Safety systems being switched off to save money—including the MIC tank refrigeration system which could have mitigated the disaster severity

The problem was made worse by the mushrooming of slums in the vicinity of the plant, non-existent catastrophe plans, and shortcomings in health care and socio-economic rehabilitation.

3. That, immediately after the disaster, UCC began attempts to dissociate itself from responsibility for the gas leak. Its principal tactic was to shift culpability to UCIL, stating the plant was wholly built and operated by the Indian subsidiary. The toxic plume had barely cleared when, on December 7, the first multi-billion dollar lawsuit was filed by an American attorney in a U.S. court. This was the beginning of years of legal machinations in which the ethical implications of the

tragedy and its affect on Bhopal's people were largely ignored.

4. That in the year 2004 Activist Alok Pratap Singh files public interest litigation 2802/2004 before the Hon'ble Madhya Pradesh High Court seeking directions to hold Dow Chemical responsible for pollution at the site and immediate action for clean up. That, the Hon'ble Madhya Pradesh High Court while hearing the matter directed to sets up a Task Force under the chairmanship of The Secretary, Department of Chemicals and Petrochemicals, Government of India for removal of toxic waste from the plant. A copy of Factsheet giving the entire detail of the working of the Task Force is filed herewith as **ANNEXURE I.**

5. That, on 26/04/2011 two issues were canvassed before the Hon'ble Madhya Pradesh High Court viz; the disposal of the hazardous waste material, which was by then polluting the underground water table and the question of strapping liability on the Union Carbide Corporation on basis of 'polluter pays' principle. The Hon'ble High Court directed the Union of India to file an affidavit in respect of procedure and plan of action for the disposal of the hazardous waste. A copy of order dated 26/04/2011 in W. P. 2802/2004 is filed herewith as **ANNEXURE II.** Though the Union of India was directed by the Hon'ble Court to strategize for removal

and disposal of the hazardous waste, no action whatsoever was undertaken by the Union of India. On 12/05/2011, the Hon'ble Court granted last opportunity to the Union of India to plan the removal and disposal of the waste and also directed the Union to have alternate plans for resolving local protest arising due to transfer of the waste from Bhopal to such other place. A copy of order dated 12/05/2011 is filed herewith as **ANNEXURE III.**

6. On 27/06/2011, the Union of India filed an affidavit stating that the DRDO has agreed to dispose off the hazardous waste at its establishment at Nagpur. The Hon'ble Court directed the Madhya Pradesh state government to speed up the matter and granted a fortnight time to the government agencies for necessary actions. A copy of order dated 27/06/2011 is filed herewith as **ANNEXURE IV.** That, 12/07/2011, the Hon'ble Court directed the Madhya Pradesh State Government to transport the toxic waste from Bhopal to Nagpur by road within 10 days time. A copy of order dated 12/07/2011 is filed herewith as **ANNEXURE V.**

7. That, the petitioners are opposing the aforementioned transfer on following grounds amongst others.

8. **GROUND**

- a. That, the transport of toxic waste from Bhopal to Nagpur is violative of the fundamental rights of the residents of Nagpur, guaranteed under Part III of the Constitution of India.
- b. It is humbly submitted that Rule 20(3) of the hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 reads as follows -

20. Transportation of Hazardous Waste.

(3) In case of transport of hazardous waste for final disposal to a facility for treatment, storage and disposal existing in a state other than the state where the hazardous waste is generated, the occupier shall obtain 'No-Objection Certificate' from the State Pollution Control Board of both the States.

It can be inferred from the aforementioned provision that obtaining the No Objection Certificate of both Madhya Pradesh Pollution Control Board and the Maharashtra State Pollution Control Board (MSPCB) is mandatory in order to transport the hazardous waste from Bhopal to Nagpur, whereas it is admitted position that No Objection Certificate has not be obtained from MSPCB till date.

c. It is further submitted to this Hon'ble Court that amongst various compounds of benzene and other harmful chemicals in Schedule 2 to the Hazardous Wastes (Management, Handling) Rules, 2008, the following have been identified in the toxic waste material: -

Lead: Schedule 2, Class B, Entry B4

Mercury: Schedule 2, Class A, Entry A6

Naphthalene: Schedule 2, Class A, Entry A12

d. Also, burning hazardous waste, even in state-of-the-art incinerators, releases heavy, unburned waste and products of incomplete combustion (PICs) i.e. new chemicals formed during the incineration process. Further the metals are not destroyed during incineration and are often released in forms that are more dangerous than the original waste. At least 19 metals have been identified in the air emissions of hazardous waste incinerators. An average-sized commercial incinerator burning hazardous waste with an average metals content emits these metals into the air at rate of 97,000 kilos and deposits another 304,500 kilos per year of metals in its residual ashes and liquids. The unburned chemicals are emitted in the stack gases if all hazardous waste combustion system. These chemicals also escape

into the air as fugitive emissions during storage, transfer and handling. PICs are emitted in the stack gases and deposited in the residual ashes and liquids of all hazardous waste incinerators. Cancer, birth defects, reproductive dysfunction, neurological damage and other health effects are known to occur at very low exposures from many of the metals, organochlorines and other pollutants released by waste-burning facilities. Moreover, the increased cancer rates respiratory ailments, reproductive abnormalities and other health effects have been noted among people living near some waste burning facilities.

e. There are certain essential questions which were neither canvassed nor addressed by the Madhya Pradesh High Court, viz.

1. Whether there is any such facility for disposal available in Madhya Pradesh?
2. If yes, then what are the reasons behind directing the state government to initiate temporary steps within 10 days for transporting the toxic waste to Nagpur?
3. Whether DRDO Nagpur is sufficiently equipped with all the facilities to dispose off the waste?

4. Whether DRDO Nagpur has disposed off such waste in the past?
 5. How is the packing, transporting and storing of the Hazardous waste being monitored?
 6. What effects will the packing, transporting, storing and incineration have on the environment of Vidarbha Region?
 7. Assuming but not admitting that the DRDO Nagpur, has the capability to dispose off half metric ton of toxic waste per day. Where and how would the rest of 246 metric ton of toxic waste be stored?
9. Therefore, by way of ad interim ex parte order or an interim order direct the respondent No. 5 & 6 to restrict the entry of the hazardous waste into the state limits of the State of Maharashtra more particularly in District and city of Nagpur for storage or disposal. That the petitioners have made a strong prima facie case, the balance of convenience rests in the favour of the petitioners. That the petitioners' cause would be defeated if the interim relief is not granted.

10. That, the petitioner has not filed any petition in this matter before this Hon'ble High Court or Supreme Court of India.
11. That, the petitioner has no alternative and equally efficacious remedy than to approach this Hon'ble High Court in its extraordinary jurisdiction under Article 226 of the Constitution of India.
12. That, the petitioner undertakes to file true English translation of documents in Marathi as and when directed by this Hon'ble Court.
13. To the petitioner's knowledge the Respondent have not filed any caveat application under Section 148-A of Code of Civil Procedure, 1908 in this matter.

PRAYER: It is therefore most humbly and respectfully prayed that this Hon'ble High Court may be pleased to issue Writ in the nature of Mandamus or any other writ, order or direction to the respondents and

- i. Direct the State Authorities/ Municipal authorities/ Authorities of State Pollution Control Board not to permit entry and disposal of toxic waste from Union Carbide Plant at Bhopal within the limits of city/district of Nagpur;
- ii. During the pendency of the present petition direct the respondent no. 5 & 6 not to allow the containers containing toxic waste to enter into the limits of

Maharashtra by road or railways from State of
Madhya Pradesh in the interest of justice;

iii. Grant ad interim ex parte relief in terms of prayer
clause ii;

iv. Grant any other relief which this Hon'ble Court
deems fit in the interest of justice;

v. Allow the instant petition.

YOUR HUMBLE PETITIONER AS IN DUTY BOUND SHALL
EVER PRAY

NAGPUR

DATED: 18/07/2011

PETITIONER No. 2

(Akshaya M. Sudame)
Advocate
Counsel for Petitioners

SOLEMN AFFIRMATION

I, Sudhir s/o daulatram Paliwal Aged: 57 years, R/o 157
Triveni Ramdaspath, Nagpur 440010 Convenor of the
Petitioner no.2 society, do hereby declare and state on solemn
affirmation that, I am authorised by the petitioner No.1 and 3
to swear affidavit on their behalf and that the contents of
above paras 1- 13 are true and correct to the best of my
personal knowledge and belief and other contents are true in
so far as information received from the records is believed to
be true and read over to me in vernacular.

The legal submissions are explained to me by my counsel and I admit them to be true on legal advice. The documents annexed to the petition are True copies of their respective originals.

Hence verified and signed on 18/07/2011 at Nagpur.

NAGPUR

DATED: 18/07/2011

DEPONENT

I KNOW AND IDENTIFY THE DEPONENT

(Akshaya M.Sudame)
Advocate
Counsel for petitioner