

Bhopal Gas Peedith Mahila Udyog ... vs Union Of India (Uoi) And Ors. on 4 May, 2007

Equivalent citations: 2007(6)SCALE507

Author: C.K. Thakker

Bench: C.K. Thakker, H.S. Bedi

JUDGMENT

C.K. Thakker, J.

1. The present two interlocutory applications are filed by the applicants, (i) Bhopal Gas Peedith Mahila Udyog Sanghathan ('BGPMUS' for short) and (ii) Bhopal Gas Peedith Sangharsh Sahayog Samiti ('BGPSSS' for short) inter alia praying to re-examine the inadequacy of Bhopal Gas Settlement; to direct Union of India to compensate the Settlement Fund five times the initial fund; to order the Reserve Bank of India to provide detailed information on management and utilization of the Settlement Fund by rendering faithful accounts relating to withdrawal of funds by Welfare Commissioner; to command Welfare Commissioner, Bhopal to provide complete information regarding process of identification and categorization of gas victims and the manner of disbursement of compensation to them; to rectify the methodology in the process of identification and categorization of gas victims and the manner of disbursement of compensation of amounts by enhancing compensation appropriately.

2. The case relates to Bhopal Gas Tragedy. On December 2, 1984, there was a massive escape of lethal gas from a storage tank at Bhopal plant of the Union Carbide (India) Ltd. resulting in large scale of deaths, injuries to several persons and destruction of properties, livestock, etc. Several suits were filed for compensation and damages in different courts in India as also in the United States. Prosecution had also been launched. Ultimately, however, a settlement had been arrived at between the Union of India and the Union Carbide. The Union of India agreed to withdraw all cases and claims against the Union Carbide and its officers. For the said purpose, Parliament also enacted an Act known as the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 which empowered the Union of India to take over the conduct of all litigation in regard to claims arising out of gas disaster and to award compensation to the victims and affected persons.

3. According to the applicants, BGPMUS is an organization formed by the Bhopal Gas Victims in 1986. Likewise, BGPSSS is an association constituted in 1989 by a coalition of over 20 voluntary organizations of Scientists, Lawyers, Teachers, Artists, Journalists, Workers, Women, Students, Youths etc. The object of these two organizations is to support the struggle of the Bhopal Gas Victims for justice. Both the organizations have consistently championed the cause of Bhopal Gas

Victims by seeking medical/economic/social relief and also payment of adequate compensation. It was stated in the applications that several steps were taken by the organizations so as to provide Bhopal Gas Victims and their families benefits to which they were entitled. Reference was made to various orders passed by this Court from time to time and it was stated that neither all eligible victims had been identified and ascertained nor adequate compensation had been paid to them. It was also alleged that though many persons lost their lives and several others injured, the number of cases in which compensation had been awarded under the head 'death' (category '04') were very small. Likewise, compensation awarded to persons who sustained 'injury' (category '01') were also showed to be less and several others had not been paid any amount whatsoever. It was asserted that the magnitude of the disaster in case of 'death' as also 'injury' was at least five times larger than what was assumed at the time settlement had been reached. It was, therefore, prayed that appropriate directions be issued so that all Bhopal Gas Victims may get compensation as gas victims/affected persons.

4. Notice was issued pursuant to which the respondents appeared. Counter affidavits were filed on behalf of the Union of India contesting the applications. It was, inter alia, contended that the applications were based on assumptions, surmises and conjectures and on misreading of judgments of this Court. According to the respondents, the applicants are trying to reiterate and reopen the issue as to compensation which had been settled with the Union Carbide Corporation (UCC) and the Union of India and this Court had approved the said settlement. Even adequacy of amount of compensation has been finally decided by this Court. The applications, therefore, are liable to be dismissed. Further affidavits were also filed by the parties.

5. We have heard the learned Counsel appearing on both the sides.

6. The learned Counsel for the applicants contended that the applications deserve to be allowed on the ground that there were many more deaths under category '04' than what was shown by the respondents and compensation had been paid. In the same manner, injuries were sustained by several persons than to whom compensation had been awarded under category '01'. For the said purpose, attention of the Court was invited to the figures which had been placed on record. Reference was also made to 2003 Annual Report published by the Bhopal Gas Tragedy (Relief and Rehabilitation) Department. Reliance was placed on an order dated July 19, 2004 passed by a two Judge Bench of this Court and an order dated August 23, 2006 passed in the present applications. It was submitted that when authentic figures are available as to 'death' and 'injury' cases, appropriate directions may be issued to the Union of India to pay compensation to gas victims under both the heads i.e. 'death' (category '04') and 'injury' (category '01'). It was also submitted that such payment must be made in US Dollars and not in Indian Rupees since the settlement was with a Foreign Company and the amount had been paid in US Dollars. Since the victims had not been paid their legal dues, the applicants were constrained to approach this Court by filing the present applications.

7. The learned Additional Solicitor General, on the other hand, submitted that from 1989 onwards, several orders had been passed by this Court from time to time. A Scheme was framed in exercise of statutory power which provided for processing of claims and in accordance with the procedure laid down therein, claims had been adjudicated and payment of compensation had been made. It was

also stated that even now, if the applicants feel that the cases of 'death' (category '04') or of 'personal injury' (category '01') are more, a remedy available to the victims is not to approach this Court by filing Writ Petitions or Interlocutory Applications, but to invoke the Scheme and to get the claims adjudicated. It was, therefore, submitted that the applications are liable to be dismissed.

8. Having heard the learned Counsel for the parties, in our opinion, the present applications filed by the organizations are not well-founded and cannot be allowed.

9. So far as re-examination of settlement or inadequacy of amount is concerned, in our opinion, it cannot be done as the said issue has already been decided by this Court. In this connection, we may refer to a decision of a Constitution Bench of this Court in *Union Carbide Corporation v. Union of India and Ors.* . In that case, after 'careful consideration' of the facts and circumstances of the case, the Court held the case to be pre-eminently fit for an 'overall settlement' between the parties covering all litigations, claims, rights and liabilities related to and arising out of the disaster. The Court, therefore, passed the following order observing that it was just, equitable and reasonable.

The Court stated;

We order:

(1) The Union Carbide Corporation shall pay a sum of U.S. Dollars 470 millions (Four hundred and seventy Millions) to the Union of India in full. settlement of all claims, rights and liabilities related to and arising out of the Bhopal Gas disaster.

(2) The aforesaid sum shall be paid by the Union Carbide Corporation to the Union of India on or before 31st March, 1989.

(3) To enable the effectuation of the settlement, all civil proceedings related to and arising out of the Bhopal Gas disaster shall hereby stand transferred to this Court and shall stand concluded in terms of the settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed wherever these may be pending.

10. Regarding 'death' (category '04') and 'personal injury' (category '01') in *Union Carbide Corporation v. Union of India and Ors.* , the same Bench observed that there were about 3,000 cases of 'death' and 30,000 cases of 'personal injury'. In paragraphs 21 to 24, the Court stated:

21. The figures adopted by the High Court in regard to the number of fatal cases and cases of serious personal injuries do not appear to have been disputed by anybody before the High Court. These data and estimates of the High Court had a particular significance in the settlement. Then again, it was not disputed before us that the total number of fatal cases was about 3000 and of grievous and serious personal injuries, as verifiable from the records of the hospitals of cases treated at Bhopal, was in the neighborhood of 30,000. It would not be unreasonable to expect that persons suffering serious and substantially compensatable injuries would have gone to

hospitals for treatment. It would also appear that within about 8 months of the occurrence, a survey had been conducted for purposes of identification of cases of death and grievous and serious injuries for purposes of distribution of certain ex-gratia payments sanctioned by Government. These figures were, it would appear, less than ten thousand.

22. In these circumstances, as a rough and ready estimate, this Court took into consideration the prima facie findings of the High Court and estimated the number of fatal cases at 3000 where compensation could range from Rs. 1 lakh to Rs. 3 lakhs. This would account for Rs. 70/-crores, nearly 3 times higher than what would, otherwise, be awarded in comparable cases in motor vehicles accident claims.

23. Death has an inexorable finality about it. Human lives that have been lost were precious and in that sense priceless and invaluable. But the law can compensate the estate of a person whose life is lost by the wrongful act of another only in the way the law is equipped to compensate i.e. by monetary compensations calculated on certain well-recognized principles. "Loss to the estate" which is the entitlement of the estate and the loss of dependency' estimated on the basis of capitalized present-value awardable to the heirs and dependants, are the main components in the computation of compensation in fatal accident actions. But, the High Court in estimating the value of compensation had adopted a higher basis.

24. So far as personal injury cases are concerned, about 30000 was estimated as cases of permanent total or partial disability. Compensation ranging from Rs. 2 lakhs to Rs. 50,000/- per individual according as the disability is total or partial and degrees of the latter was envisaged. This alone would account for Rs. 250/- crores. In another 20,000/-cases of temporary total or partial disability compensation ranging from Rs. 1 lakh down to Rs. 25000/- depending on the nature and extent of the injuries and extent and degree of the temporary incapacitation accounting for a further allocation of Rs. 100/- crores was envisaged. Again, there might be possibility of injuries of utmost severity in which case even Rs. 4 lakhs per individual might have to be considered. Rs. 80 crores, additionally for about 2000 of such cases were envisaged. A sum of Rs. 500 crores approximately was thought of as allocable to the fatal cases and 42,000 cases of such serious personal injuries leaving behind in their trail total or partial incapacitation either of permanent or temporary character.

11. The Court, however, was conscious of the ground reality and proceeded to observe:

29...These apportionments are merely broad considerations generally guiding the idea of reasonableness of the overall basis of settlement. This exercise is not a predetermination of the quantum of compensation amongst the claimants either individually or category-wise. No individual claimant shall be entitled to claim a particular quantum of compensation even if his case is found to fall within any of the broad categories indicated above. The determination of the actual quantum of

compensation payable to the claimants has to be done by the authorities under the Act, on the basis of the facts of each case and without reference to the hypothetical quantifications made only for purposes of an overall view of the adequacy of the amount.

30. These are the broad and general assumptions underlying the concept of 'justness' of the determination of the quantum. If the total number of cases of death or of permanent, total or partial, disabilities or of what may be called 'catastrophic' injuries is shown to be so large that the basic assumptions underlying the settlement become wholly unrelated to the realities, the element of 'justness' of the determination and of the 'truth' of its factual foundation would seriously be impaired. The 'justness' of the settlement is based on these assumptions of truth. Indeed, there might be different opinions of the interpretation of laws or on questions of policy or even on what may be considered wise or unwise; but when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted.

12. It may also be appropriate to observe here that an Act had been enacted by Parliament known as 'the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985' referred to above, validity of which had been upheld by a Constitution Bench of this Court in Charan Lal Sahu v. Union of India . Section 9 of the Act empowered the Central Government to frame a Scheme for carrying into effect the purposes of the Act. In exercise of the said power, the Central Government framed a Scheme known as the 'Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985'. The Scheme is a 'complete Code' in itself. Para 3 of the Scheme enables the authorities to register claims lodged before them. Whereas Para 4 (and 4A) deals with manner of filing claims, Para 5 provides for categorization and registration of claims. Para 6 requires the Deputy Commissioner to take into consideration matters for categorization of claims. Procedure has been laid down in Para 8. Paras 9 and 10 deal with Processing of Claims Account Fund and Claims and Relief Fund respectively. Para 11 of the Scheme relates to determination of quantum of compensation payable to claimants. Clause (5) of Para 11 provides for appeal against an order passed by the Deputy Commissioner to the Additional Commissioner. Para 13 enumerates functions of Commissioner and other officers appointed under the Act. It also confers revisional jurisdiction on Additional Commissioner over an order passed by the Deputy Commissioner.

13. In Union Carbide Corporation and Ors. v. Union of India and Ors. , this Court ensured that no victim of Bhopal Gas Tragedy would be deprived of the benefit to which he/she is otherwise entitled. The Court, accordingly, proclaimed;

After a careful thought, it appears to us that while it may not be wise or proper to deprive the victims of the benefit of the settlement, it is, however, necessary to ensure that in the perhaps unlikely-event of the settlement-fund being found inadequate to meet the compensation determined in respect of all the present claimants, those persons who may have their claims determined after the fund is exhausted are not left to fend themselves. But, such a contingency may not arise having regard to the size of the settlement-fund. If it should arise, the reasonable way to protect the interests of the victims is to hold that the Union of India, as a welfare State and in the circumstances in which the

settlement was made, should not be found wanting in making good the deficiency, if any. We hold and declare accordingly.

(emphasis supplied)

14. So far as the amount of compensation is concerned, the Government of India issued guidelines by notification dated April 13, 1992 providing for compensation payable in cases of death, injury, loss of belongings, loss of livestock etc. The relevant categories and the amount of compensation read thus:

CATEGORY RANGE/CEILING (Rs.) Deaths 1-3 lakhs Permanent total or partial disability 50,000 to 2 lakhs Injury of utmost severity Upto 4 lakhs Claims for minor injuries Upto 20,000 Loss of belongings Upto 15,000 Loss of livestock Upto 10,000

15. In *Krishna Mohan Shukla v. Union of India and Ors.*, this Court held that the decision of the Deputy Commissioner to put a claim in a particular categorization is a quasi judicial decision and not an administrative one. Such order is appealable as also revisable and even thereafter it could be challenged by invoking the doctrine of judicial review.

16. Again, in *Krishna Mohan Shukla v. Union of India*, this Court considered the relevant paras of the Scheme and placement of claims under different categories mentioned in Para 5 of the Scheme. It also considered the grievances against placement of claims and remedy available to the aggrieved party in such cases. It observed that effective remedy is available to the aggrieved party and such remedy is exhaustive. The Court highlighted an important fact that a Welfare Commissioner was a sitting Judge of the Madhya Pradesh High Court and normally, therefore, the claimant should have no cause of grievance after the decision by the Welfare Commissioner. But even thereafter, a remedy under Articles 226 and 227 of the Constitution was available.

17. In para 8, the Court observed;

8. As we see it, the limits within which compensation can be awarded for claimants falling under different categories in Para 5, the Central Government has specified the amounts under Para 11(2). Specific ailments are not mentioned therein. In practice, the Deputy-Welfare Commissioner and the Additional Welfare Commissioner have to deal with ailments and the question would arise as to under what category of Para 5 of the Scheme would they fall and secondly as to what is the specific amount which is payable to them within the scale. The Committee of Deputy Commissioners appear to have formulated a yardstick which would obviously avoid delay in the determination of the amount of compensation which is payable. In a modification carried out on 6th December, 1997, it has been made clear, and in our opinion rightly so, that the amount determined as compensation for different types of ailments. is not final. It will be subject to determination afresh, if called in question, either in appeal or in revision before the Welfare Commissioner. We would at this stage like to emphasise that we have seen orders passed by the Welfare Commissioner where he has entertained revision petitions against the orders in appeal passed by the Additional Commissioner. A Welfare Commissioner is a sitting Judge of the Madhya Pradesh High Court and normally,

therefore, the claimant should have no cause of grievance after the decision by the Welfare Commissioner. Even if thereafter there is some grievance, the right of judicial review, inter alia, provided by Articles 226 and 227 of the Constitution is always available. There can be little doubt that the aggrieved persons are entitled to receive fair and just compensation and/or damages due to them. There is now a system in place and any claims which are made have to be determined within this system. There is first determination by the Deputy Welfare Commissioner against which an appeal can be filed to the Additional Welfare Commissioner and thereafter a revision to the Welfare Commissioner. If even then there is a grievance of a claimant, proper remedy is to approach the High Court who would be in a position to deal with a case more expeditiously and give relief to the individual claimant, where it is called for without undue expense, rather than approaching this Court under Article 32 or Article 136 of the Constitution.

18. In Para 11, this Court expressly stated that if any of the claimants had any grievance against an order passed by the Welfare Commissioner or by the Tribunal, it was open to the claimant to seek judicial review but "first it must be sought before the High Court rather than filing a writ petition under Article 32 or a special leave petition under Article 136 directly in this Court".

19. From what we have stated hereinabove, it is abundantly clear that this Court has streamlined the claims arising out of Bhopal Gas Tragedy Disaster. Precisely to deal with the cases of Bhopal Gas Tragedy that an Act has been enacted, a Scheme has been framed under the Act and the Procedure has been laid down. They have been held to be constitutional and intra vires. Any person lodging a claim is required to make an application and a duty is cast on the Authority to take an appropriate decision on the basis of the Scheme and Guidelines. Such adjudication has been held quasi-judicial in nature subject to appeal, revision and judicial review before the High Court under Articles 226 & 227 and even thereafter before this Court under Article 136 of the Constitution. Since the consideration of claim and adjudication thereof require determination of facts, the Court ruled that it must be done in accordance with the Scheme, Guidelines and Procedure under the Act and not in any other manner. So far as compensation is concerned, this Court has held that it should be in Indian currency and even under the Scheme, such amount is fixed in Indian Rupees. We, therefore, see no grievance now can be made on that issue.

20. The learned Additional Solicitor General stated that several false and vexatious claims under category '04' (death) and category '01' (injury) had been lodged. It would not be appropriate for this Court to express any opinion one way or the other, particularly in the light of the decisions of larger Bench of this Court referred to hereinabove. If any person claims that he/she is adversely affected by Bhopal Gas Tragedy Disaster, he/she is at liberty to take appropriate steps as suggested by this Court in the above cases but not in any other manner.

21. For the foregoing reasons, in our considered opinion, no case has been made out to issue any direction in the interlocutory applications. They are not well founded and are ordered to be dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.