

Bhopal Gas Peedith Mahila ... vs U.O.I. & Ors on 9 August, 2012

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Bench: Swatanter Kumar, A.K. Patnaik, S.H. Kapadia

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO.50 OF 1998

Bhopal Gas Peedith Mahila Udyog
Sangathan & Ors.

... Petitioners

Versus

Union of India & Ors.

... Respondents

WITH

IA NOS. 62-63 OF 2011

IN

CIVIL APPEAL NOS.3187 – 3188 OF 1988

O R D E R

Swatanter Kumar, J.

1. Unlike natural calamities that are beyond human control, avoidable disasters resulting from human error/negligence prove more tragic and completely imbalance the inter-generational equity and cause irretrievable damage to the health and environment for generations to come. Such tragedy may occur from pure negligence, contributory negligence or even failure to take necessary precautions in carrying on certain industrial activities. More often than not, the affected parties have to face avoidable damage and adversity that results from such disasters. The magnitude and extent of adverse impact on the financial soundness, social health and upbringing of younger generation, including progenies, may have been beyond human expectations. In such situations and where the laws are silent or are inadequate, the courts have unexceptionally stepped in to bridge the gaps, to provide for appropriate directions and guidelines to ensure that fundamentals of Article 21 of the Constitution of India (for short “the Constitution”) are not violated.

2. The Bhopal Gas Tragedy is a glaring example of such imbalances and adverse impacts, where by court’s intervention, poor and destitute have been provided relief and rehabilitation.

3. The Bhopal Gas Leak Disaster occurred on the intervening night of the 2nd/3rd of December, 1984. Data reflecting the exact number of affected persons was not available initially. Earlier, it was felt that only a small number of persons were adversely affected in terms of health or otherwise by the leakage of toxic gases from the Union Carbide Unit at Bhopal. However, the Scientific Commission for Continuing Studies on Effects of Bhopal Gas Leakage on Life Systems (for short the ‘Scientific Commission’) released a Report titled ‘The Bhopal Gas Disaster: Effects on Life Systems’ in July, 1987 which suggested otherwise. This Report stated that for the estimated population of 2,00,000 exposed to the toxic gases in the severely and moderately affected areas of Bhopal and the variety of long-term problems anticipated in the crisis period, the number of exposees covered so far by the Indian Council of Medical Research (for short the ‘ICMR’) through the epidemiological surveys constitute less than 20 per cent of the population. With the passage of time, this figure of the affected population has swollen to nearly 5,00,000. By the same Scientific Commission, it was also found that in general, the output of the epidemiological project so far had not equalled the magnitude of the tasks assigned to them, presumably due to lack of resources, trained staff as well as physical inputs. An opportunity for mounting such a massive long- term longitudinal study on a population exposed to a one-time acute chemical stress may not present itself again and hence it would be a pity if that opportunity was missed. Various steps were recommended by the Scientific Commission, from time to time, to tackle the two main aspects of this disaster. Firstly, health care of the affected victims and secondly, research work with the object to deal with the acute problems arising from this disaster on the one hand and to suggest preventive steps on the other.

4. Writ Petition (Civil) No. 50 of 1998 was filed by the Bhopal Gas Peedith Mahila Udyog Sanghathan as a public interest litigation under Article 32 of the Constitution. This petition was founded on the rights available to the victims of the Bhopal Gas Disaster under Article 21 of the Constitution and it was prayed that they were entitled to receive free and proper medical assistance from the respondents, the Union of India and the State of Madhya Pradesh. It was also prayed that the respondents be directed to take effective steps in that regard which inter alia included providing of free medicines and preparing a detailed plan of medical rehabilitation that ensured the availability of basic medical facilities to the gas victims. Lastly, it was also prayed that the ICMR be

directed to resume and conduct research studies and to make public the reports published by it so as to provide the basic ground for issuance of appropriate directions by this Court.

5. This Court has been passing various directions right from the filing of this petition and has directed certain effective and positive steps to be taken by the Union of India as well as the State of Madhya Pradesh to ensure providing of appropriate medical treatment to the gas victims. It is no use referring to the different orders passed by this Court from time to time in detail. However, we will be referring to some of the important orders in brief which have a bearing on the issue now pending before this Court and for passing of the final directions.

6. To begin with, the ICMR had undertaken certain research works immediately after the Bhopal Disaster and appropriate steps had been taken, as claimed by the State and the Central Government, to deal with the medical problems of the gas victims. However, it appears from the record and has been averred before us that after 1994, the ICMR allegedly took an irrational decision to disband all Bhopal Gas Disaster related medical research. This abandoning of research work has been seriously criticised in the present petition. Certain appeals had been filed against the order of the High Court of Madhya Pradesh which came to be registered as Civil Appeal Nos. 3187-3188 of 1988, which were subsequently clubbed with Writ Petition (Civil) No. 50 of 1998. I.A. Nos. 32-35, 36-37 in Civil Appeal Nos. 3187-3188 of 1988 titled "Union Carbide Corporation Ltd. v. Union of India" were filed for seeking different directions, upon which and vide order dated 15th May, 1988, this Court directed creation of the Bhopal Memorial Hospital and Research Centre (for short 'BMHRC') and the Bhopal Memorial Hospital Trust (for short 'BMHT/the Trust') which was constituted for the purposes of healthcare of the affected gas victims. This hospital initially was to run for a period of eight years which term was extended from time to time and then finally, vide order dated 2nd May, 2006, the term was extended till completion of its object. Further, vide order dated 17th July, 2007, this Court also sought report from the ICMR on various toxic effects of the leaked gas.

7. This Court also, by order dated 17th September, 2004 passed in Writ Petition (Civil) No. 50 of 1998, ordered the constitution of two expert committees being the 'Monitoring Committee' and the 'Advisory Committee'. The latter was formed by ICMR under the Chairmanship of Director General of ICMR and its terms of reference were as follows:

"(i) To examine the treatment practices currently followed by medical personnel in the hospitals/clinics run by the Government for the Bhopal Gas victims for the various ailments suffered by them.

(ii) To recommend/advise on the appropriate line of treatment to be offered to the Bhopal gas victims.

(iii) To recommend/advise on the structure and content of the research to be undertaken in order to improve the quality of the treatment being offered to the Bhopal Gas victims."

8. The Advisory Committee has been submitting its reports from time to time and it was assured by the State Government that the said Committee will be provided with all facilities and technical inputs. Then, the ICMR conducted its research investigation in the form of 24 major research projects ranging from epidemiology to molecular biology implemented by 15 National Institutes. Vide letter dated 17th February, 2004, from the Director General of ICMR to the Government of Madhya Pradesh it was indicated that with respect to future needs for research, ICMR would facilitate the Madhya Pradesh State Government by constituting a Committee of experts which would look into the work carried out between 1985 to 1994 as well as the subsequent research by the Centre for Rehabilitation Studies under the Bhopal Gas Tragedy Relief and Rehabilitation Department (for short, the 'BGTRRD'), Bhopal from 1995 till date, so as to provide guidelines for future research. On 24th June, 2010, the Union Cabinet passed a resolution directing the ICMR to establish a new permanent research centre at Bhopal which was done on 11th October, 2010, namely, the National Institute of Research in Environment Health (for short the 'NIREH'). The research work is being continued by the ICMR, while it submits its report to this Court from time to time. The vision document was duly prepared by the NIREH.

9. In the background of this vision document, it is stated that after the Methyl Isocyanate (MIC) gas episode at Bhopal, various research programmes were conducted by the ICMR to monitor the research programme and also to undertake long term epidemiological studies to record the morbidity and mortality of the cohort of gas exposed and control population.

10. In order to ensure smooth running of the BMHT, a corpus had been created which was provided with funds and contributions that were invested from time to time and the total corpus, as of now, constitutes Rs. 436.47 crores. Out of this amount, Rs.226.61 crores has been invested in RBI Bonds in Banks, Rs. 196.54 crores in FDRs in Banks, Rs.11.65 crores in the short term deposits in Flexi/Quantum in Banks and Rs.1.67 crores is the bank balance.

11. During the pendency of this petition, various directions had been passed by this Court to ensure smooth working of the Trust in both the fields of health care and research work. We may refer to some significant orders passed by this Court.

12. The surveys conducted by the ICMR, including the epidemiological survey in 1994, showed multi-organ symptoms amongst the persons exposed and there was tremendous increase in symptoms exhibited by the affected persons. There was even shortage of medicines and various representations were made requesting improvement thereof. Vide order dated 17th September, 2004, the Court had spelt out the terms and conditions for the Monitoring Committee and the Advisory Committee. It related to procedural matters, functioning and terms of reference of the respective Committees. The paramount functions of the Monitoring Committee were to monitor suitability, availability and maintenance of medical equipments, deployment of adequate and competent medical personnel, more specifically the treatment offered at the hospitals and the functioning of these hospitals run by the Government for the Bhopal Gas victims, purchase and availability of medicines to the affected persons etc. Similarly, the Advisory Committee, while determining its own rules of procedure, was to examine the treatment practices currently followed by the medical personnel in the hospitals run by the Government for these victims in relation to

various ailments suffered by them. Further, this Committee was to recommend and advice on the appropriate line of treatment to be offered to the Bhopal gas victims. It was further to recommend and advise on the kind of medical equipments and medicines required to be procured to improve the quality of treatment being offered to the victims as well as to initiate and recommend community health initiatives in health education and community participation for prevention and care.

13. Then vide order dated 17th July, 2007, the Court directed the State of Madhya Pradesh to take necessary steps for computerising the records of the hospital so that the details of the patients and/or their ailments were made permanent record to ensure their proper treatment in future. One of the factors which invited the attention of the Court at that time was that the patients who were not the victims of the gas tragedy had also started coming to the hospital, which led to passing of an order wherein the Court required the Monitoring Committee to submit a report if the treatment facilities afforded to such patients were adversely affecting the treatment of the gas victims.

14. Various reports were submitted by the two Committees afore-mentioned which were considered from time to time by this Court. Vide order dated 15th November, 2007, the Court had called upon the State of Madhya Pradesh to provide answers to the questions which were raised by the Monitoring Committee which was overseeing the functions of the hospital and the research work. Report was also sought from the ICMR on various toxic effects of the gas.

15. Thereafter, because of certain events, the Chairman of BMHT resigned. The co-ordination and smooth functioning of these units was found to be lacking and many applications in this regard were filed before the Court. As already noticed, the Court had directed setting up of a hospital for treatment of Bhopal Gas victims vide its order dated 15th May, 1988 in furtherance to which the hospital was established and even the Trust was registered on 11th August, 1988. There existed uncertainty in the decision making process. The Attorney General for India made a statement that the Union of India had decided to take over the BMHRC and run it through Department of Biotechnology and Department of Atomic Energy. In furtherance to this statement, the Court disposed of I.A. No. 58-59 of 2009 and vide its order dated 19th July, 2010, the Court directed the Central Government to take steps for winding up the Trust and taking over the management of the hospital.

16. Thereafter, certain IAs came to be filed before this Court. In these IAs, different parties had prayed for issuance of different directions in relation to the working, management and control of BMHRC. IA Nos.62-63 of 2011 in Civil Appeal Nos.3167-3188 of 1988 have been filed with the prayer that the Union of India be directed to take charge of the corpus funds of the erstwhile BMHT through its Department of Biotechnology and Department of Atomic Energy and transfer the accounts of BMHT to the new management. It was also prayed that the management of the erstwhile BMHT be relieved of all its responsibilities pertaining to management of the corpus and new authorised signatories be appointed for its accounts. One of the petitioners in the main petition filed an application being IA No. 14 of 2012, primarily relying upon the letter written by Dr. Sathyamala, (Member, Advisory Committee) to Dr. P.M. Bhargava, (Member, Advisory Committee and Chairperson of the Task Force). It was prayed that the same be taken on record and the Advisory Committee be directed to submit minutes of its meetings dated 13th August, 2009, 22nd September,

2010 and 10th December, 2011. Petitioner Nos.1 and 3 have filed IA No.16 of 2012 wherein they have prayed for issuance of certain directions. In this application, it has been stated that the Monitoring Committee in its reports dated 10th June, 2005, 31st October, 2005, 12th July, 2006, 20th December 2006, 7th August, 2007 and 27th May, 2008 have consistently recommended computerization of the hospital records and issuance of 'health booklets' to the gas victims. It is averred that recommendations of the Advisory Committee have not been complied with by the State Government, the ICMR and even the Union of India. They have also made a suggestion for issuance of 'smart cards' to the gas affected victims besides issuance of proper health booklets. The NIREH, as established by the ICMR, though was a welcome step, according to these applicants much is desired of the functioning of NIREH. The allegation is that the decision makers at the ICMR are doing everything on their part to ensure that the crucial issues affecting the life and health of the gas victims remain unaddressed at a macro level. All the concentration presently is on building the infrastructure for the NIREH. On this premise, the applicants have prayed that the orders of the Court should be complied with by the State of Madhya Pradesh as well as the ICMR for issuance of 'health booklets' and 'smart cards' to the affected persons. They also prayed for adoption of a common referral system among various medical units under BMHRC and under the BGTRRD so that the gas victims are referred to the appropriate centres for proper diagnosis, investigation and treatment in terms of the nature and degree of injury suffered by each one of them and also in terms of therapeutic requirements. They also prayed that NIREH be directed to set up completely computerized and centrally networked Central Registry, to maintain proper medical records of all gas victims, to streamline and intensify epidemiological studies among the gas-affected population and to prepare treatment protocol for treating each category of ailment that the gas victims are suffering, such as respiratory diseases, eye-related diseases, gastro-intestinal diseases, neurological diseases, renal failure, urological problems, gynaecological problems, mental disorders, etc.

17. In other IAs/ replies filed on behalf of different parties, it has been pointed out that the Monitoring Committee should have the jurisdiction over all hospitals, including non-governmental hospitals and clinics in Bhopal. They should also be vested with powers of recommending penal action against the persons who are found to be defaulting in carrying out the appropriate treatment or following the directions of the Monitoring Committee from time to time. It has also been prayed that the research work could be carried out by private laboratories or private research units besides the research work being carried on by the ICMR and/or its established unit. It was also brought out from the record before the Court that there is no co-ordination between the various functionaries dealing with this tragedy and, in fact, the views of the Advisory Committee are not given due weightage by the implementing agencies, thereby adding to the suffering and agony of the affected parties.

18. No doubt, the BMHT was established for providing medical treatment and care to the gas victims. Both the Monitoring Committee and the Advisory Committee, appointed by this Court, had different earmarked areas of their respective operation, though their aim was common. The Advisory Committee was required to advise as per its expertise on matters which the implementing agencies, i.e., the Trust as well as the State Government, were expected to perform. On the other hand, the Monitoring Committee was required to oversee the functioning of the research work as well as the timely providing of medical care and treatment to the gas affected victims. Functions of

each of these bodies were sufficiently and unambiguously spelt out in different orders of this Court. After submission of the reports by the respective Committees, this Court had also passed various directions for the better and improved performance of these units, so as to ensure better medical care and requisite treatment to the gas victims.

19. As we have already noticed, with the passage of time this disaster has attained wider dimensions and greater concerns, which require discharge of higher responsibilities by all the agencies. In terms of Article 21 of the Constitution, all the gas victims are entitled to greater extent of multi-dimensional health care, as their sufferings are in no way, directly or indirectly, attributable to them. It was, primarily and undoubtedly, the negligence on the part of the Union Carbide Ltd. that resulted in leakage of the MIC gas, causing irreversible damage to the health of not only the persons affected but even the children who were still to be born.

20. The first and foremost question that arises for consideration of this Court is as to whether this matter should be kept pending before this Court or should it be transferred to an appropriate forum, including the High Court, for a more effective and purposeful management of these institutions and to ensure that they satisfactorily serve the purpose of 'public service and benefit' for which they have been constituted. Various applications filed before this Court and reports submitted by the Committees, as afore- referred, are to provide requisite help to the gas victims, as it is not possible for the poor victims to approach this Court for issuance of appropriate directions from time to time. This Court has already ordered providing of basic requirements and constitution of Advisory Committee and the Monitoring Committee. While the management of BMHT was taken over by the Union of India, through Ministry of Health and Family Welfare, the hospital was to run under the direct control of Department of Bio- Technology and Department of Atomic Energy and subsequently, the hospital was also placed under the control of the Ministry.

21. In our considered opinion, it will be appropriate that day-to-day directions are passed by a jurisdictional High Court. Such Court would be in a better position to appreciate the requirements of the gas affected victims as well as to exercise better control over the functioning of the said Committees and organizations. Such direct control would improve the functioning of these units and their inter and intra co-ordination resulting in better mutual performance. Therefore, we consider it not only desirable but also in the interest of all concerned that this matter should henceforth be dealt with by the High Court of Madhya Pradesh, Bench at Jabalpur.

22. In addition to the directions issued by this Court from time to time, it is also necessary for this Court to pass some further directions to provide clarity and precision and also to ensure effective implementation of the various orders which shall remain an integral part of this wide scheme sought to be enforced for the betterment of the gas victims. As far as the argument that there should be privatization of the research work and the Monitoring Committee should be empowered to have control over all hospitals where the gas victims may go for treatment, including private hospitals and clinics of Bhopal is concerned, the same is without any substance. We are of the considered opinion that it would neither serve the ends of justice nor the interest of the gas victims. On the contrary, there would be multi-differential research without any substantive result. Furthermore, the Monitoring Committee has been constituted by this Court vide its order dated 17th September,

2004, with a definite object and specifically assigned functions and terms of reference. There is no justification, much less any need, for expanding the scope of its functioning or bringing the private hospitals/clinics within the jurisdiction of this Empowered Monitoring Committee. Both these prayers, thus, need to be declined, which we do hereby decline.

23. Certainly, there are certain other matters which require attention of this Court. Matters in relation to better co-ordination between the functioning of the authorities, issuance of 'Health Booklets' and 'Smart Cards' to the gas victims, computerization of medical records of the hospitals, taking over of corpus of the BMHT, management of the Trust and certain matters where the State of Madhya Pradesh has failed to effectively accept the recommendations of the Committees, are some of the matters where we would have to issue certain further directions. From the record before us, it appears that the meeting of the Monitoring Committee was held on 29th March, 2011. In this meeting, the Committee proposed that further powers be vested in it for improving the quality of medical care available to the Bhopal gas victims. The proposal of the Committee reads as under :

"The Monitoring Committee for Medical Rehabilitation of Bhopal Gas Victims proposes to have the following powers to be vested upon it by the Hon'ble Supreme Court for improving the quality of medical care available to the Bhopal Gas Victims.

1. Powers to take up matters on the basis of complaints made by any individual gas victim or representatives of organization of gas victims. Such complaints may be against any individual official of the department of Bhopal Gas Tragedy Relief and Rehabilitation or any employee in the hospital and other health care centers meant for medical care of gas victims or employed by any agency that is working under the Department of Bhopal Gas Tragedy Relief and Rehabilitation.

2. Powers to direct the concerned department of the State government to ensure facilities such as sufficient office space with furniture and furnishings, office staff including one secretary and one doctor to act as coordinating officer and one each of Hindi and English stenographer-cum-typist and one peon and for transportation of members one vehicle with seating capacity for at least five persons.

3. There should be provision of payment of honorarium to members of the committee and also to other persons who are assigned some specific job by the Committee. It is proposed that Rs.1,000/- per meeting or hospital inspection may be granted.

4. Powers in respect of the following matters namely :-

(i) Requisitioning any official document or inspect any official records that the Monitoring Committee finds relevant.

(ii) To ask concern institutions and/or officers for their examination and record their view.

(iii) This Committee should have the facilities of collection of sample of medicine etc as may be required from time to time for detailed examination for this drug controller may be requested for these. Collection samples of medicines, food and other items that may be necessary for assessment of quality of medical care provided at the health care facility. Drug controller may be requested to depute drug inspector for collecting sample etc. to complete the process of inquiry wherever it may be necessary.

5. Powers to recommend penal action against any officer who without any reasonable cause has failed to implement the recommendations of the Monitoring Committee within the time limit prescribed.

6. Powers to award studies to selected agencies (that could include non-government agencies) is may be required from time to time for proper assessment of the quality of care provided at different health care facilities within the jurisdiction of the Monitoring Committee.

7. Powers to engage the services of experts in different fields for assessment of quality of care for implementations of recommendations made by the Monitoring Committee.

8. Powers to call for public hearing for recording and redress of grievances and creating awareness about the activities of the Monitoring Committee among the Bhopal Victims.

The Monitoring Committee for Medical Rehabilitation of Bhopal Gas Victims shall have jurisdiction over all the hospitals, clinic, day care centres and other health care units and centers meant for the medical rehabilitation of the Bhopal Gas Victims including those run by the Department of Bhopal Gas Tragedy Relief and Rehabilitation.

The foregoing power and functions of the Authority shall be subject to the supervision and control of the Hon'ble Supreme Court.

The direction of the Hon'ble Supreme Court dated 10.01.2011 would be taken into consideration by the Monitoring Committee."

24. These recommendations of the Monitoring Committee have been answered by the State by filing an independent reply. In this reply, it has been stated that the recommendation with regard to jurisdiction over all hospitals and clinics is contrary to the terms of the order of this Court dated 17th September, 2004. The power to receive complaints from the affected parties has already been permitted. The Monitoring Committee is also empowered to conduct hearing and collect evidence by requisitioning of the records and examination of the officers from various departments and the hospital. The State also has no objection to the Committee collecting the samples of medicines in accordance with the provisions of the Drug and Cosmetics Act, 1940 and the Drug and Cosmetics Rules, 1945. It is also the stand of the State Government that they have implemented most of the directions issued by the Monitoring Committee.

25. Another aspect that has been brought to the notice of this Court is that adequate space for office of the Monitoring Committee is not available. This makes it difficult for the public to gain accessibility to the small space that has been provided by the State to the said Committee. This is hampering its functioning in accordance with the orders of this Court.

26. It is commonly conceded before us that the corpus money stands completely transferred to the Ministry of Health and Family Welfare, Department of Health Research (for short 'DHR') and they have also taken over the management of BMHRC.

27. Thus, it is necessary for us to deal with the various prayers made in the above application and the background leading to the filing of such application in its correct perspective. We have to take a balanced approach which would further the cause of accurate research and better medical care in favour of the gas victims. The Union of India has already passed a resolution directing the ICMR to establish a permanent research centre at Bhopal which, as already noticed, has already been established in the name of NIREH. This itself is sufficiently indicative of the intent of the Government of India to provide and procure necessary machinery for research related works as well as to further the process of getting much needed scientific manpower and research, which can contribute in research activities relating to gas affected persons.

28. The Advisory Committee is performing its advisory function continuously. Definite replies had been filed on behalf of the State of Madhya Pradesh and the Government of India ensuring their full cooperation and complete implementation of the recommendations of these Committees, so as to provide adequate medical facilities to the affected persons and the completion of the research work.

29. As already noticed, suggestions made by the Monitoring Committee in its Report dated 29th March, 2011 have been broadly accepted by the State of Madhya Pradesh, except for two of such proposals. The reservation of the State Government on the issue of assistance of non-governmental organisation and experts from outside in assessing the quality of care and research work, appears to be for valid and good reasons. We wish to make it clear that the recommendations of the Empowered Monitoring Committee, as afore-mentioned, shall not be deemed to have been accepted by this Court, except where directions in that behalf have been specifically passed by this Court in the operative part of this order.

30. Vide letter dated 12th April, 2012, the ICMR while making a reference to the order of this Court dated 19th July, 2010 had informed that the administrative control of BMHRC, after winding up of BMHT, had been transferred to the DHR, Ministry of Health and Family Welfare, Government of India and all other matters, including administrative, financial and legal, pertaining to BMHRC would be dealt with by the DHR. All documents were also admitted to have been transferred, except the corpus of the Trust. It was suggested that the Corpus of BMHT with accumulated interest along with original documents/receipts be transferred to the Secretary, DHR- cum-DG, ICMR and it was also stated that BMHT had been wound up as per the directions of this Court with effect from 19th July, 2010.

31. The BMHT had been constituted under the Deed of Trust dated 11th August, 1998. Since then, it had carried on its activities under the guidance of the Monitoring Committee, the Advisory Committee and as per the orders of this Court. The BMHT was to remain irrevocable for all times and the Trust Deed was to be construed and have effect in accordance with the Indian laws as per the terms and conditions of the Trust.

32. In terms of the clauses of this Deed, initially the Trust was to stand possessed of the Trust property and income thereof. This possession was to remain both during and after termination of the said period of eight years for the purposes and objects stated therein, which primarily were related to providing for infrastructure of the hospital and grant of medical aid to the poor, without distinction of race, caste or creed to the gas affected victims.

33. The accounts of the Trust had been audited and the chartered accountants submitted their Report dated 15th July, 2011 pointing out no irregularity or objections to the accounts of BMHT. This Report was submitted to the Members of the Governing Body of the BMHT. In the opinion of the Chartered Accountants, the balance sheet of the state of affairs of BMHT upto 19th July, 2010 along with accounts giving the required information, gave the true and fair view and was in complete conformity with the accounting principles generally accepted in India. Similar remarks have been made in regard to the Income and Expenditure Account wherein an excess of income over expenditure can be seen for the said period.

34. It would still be in the interest of BMHT itself, particularly when the management and the corpus of the BMHT have been transferred to the Union of India that the Government agency, besides regularly inspecting the accounts of the BMHT, also gave their final report for the period ending July 2010. The Auditor General of the State of Madhya Pradesh would be the appropriate authority to inspect the accounts of the BMHT regularly even when the management and corpus thereof is transferred to the Union of India.

35. Having noticed in detail the factual aspect of this case, the suggestions made by various applicants, recommendations of the expert bodies and keeping in mind the very object for which the present Public Interest Litigation was instituted, we are of the considered view that issuance of certain specific directions are inevitably called for. These orders would be to ensure proper progress and implementation of the 'Relief and Rehabilitation programme' for the penurious gas victims as well as to ensure that the research work is result-oriented and continued with exactitude. We make it clear that these directions shall be in aid of the various orders passed by this Court from time to time in the present petition and not in derogation thereto. In other words, all orders passed by this Court with specific reference to the orders mentioned above, shall be read mutatis mutandis to these directions and shall remain in force. The orders-cum-directions are :

- 1) This Public Interest Litigation (Writ Petition (Civil) No.50 of 1998) shall stand transferred to the jurisdictional Bench of Madhya Pradesh High Court for better and effective control in this case.

All applications filed henceforth shall be dealt with and disposed of by the concerned Bench of the High Court, in line with the various orders passed by this Court, so as to ensure proper functioning of the 'Relief and Rehabilitation Programme', working of the expert bodies and utmost medical care and treatment to the gas victims.

2) We request the Chief Justice of the Madhya Pradesh High Court to ensure that the case is dealt with by a Bench presided over by the Chief Justice himself or a Bench presided over by the senior most Judge of that Court or any other appropriate Bench in accordance with the High Court Rules of that Court or any special legislation governing the subject in that behalf.

3) Since the space already provided appears to be insufficient, the State of Madhya Pradesh is hereby directed to ensure provision of proper and adequate office space for the Monitoring Committee and the Advisory Committee, to perform their functions effectively. The space so provided should be accessible to public so that the gas victims can conveniently approach the Monitoring Committee for redressal of their grievances and difficulties.

4) We also direct the State Government to provide proper infrastructure to the Committees in the independent office space provided to it. The members would also be entitled to receive Rs.1,000/- honorarium for each effective meeting. However, no honorarium shall be payable on a day when the meeting is adjourned or no effective business is performed in the meeting of the Committee.

5) The Monitoring Committee has already been authorised and it is hereby clarified that it would hear the complaints and, if necessary, can even call for the records from the concerned hospital or department, record the statements of Government servants or employees of the hospital and make its recommendations to the Government for taking appropriate steps. If no action is taken by the State Government even upon a reminder thereof, the Committee would be well within its jurisdiction to approach the High Court for appropriate directions. We make it clear that the Empowered Monitoring Committee shall have no penal jurisdiction. It shall discharge its functions strictly within the framework of the powers vested and functions awarded to it under the orders of this Court. Such suggestions of the Monitoring Committee shall be primarily recommendatory and reformative in their nature and content.

6) The Empowered Monitoring Committee shall have complete jurisdiction to oversee the proper functioning of the hospital, i.e., BMHRC as well as other Government hospitals dealing with the gas victims. This jurisdiction shall be limited to the problems relateable to the gas victims and/or the problems arising directly from the incident or even the problems allied thereto. We make it clear that the Empowered Monitoring Committee shall have no jurisdiction over the private hospitals, nursing homes and clinics in Bhopal. However, it does not absolve the State of Madhya Pradesh and the Medical Council of India from discharging its responsibilities towards the gas victims who are being treated in private hospitals, nursing homes or clinics. We do expect these authorities to hear the grievances of the complainants as well as to ensure maintenance of due standards of treatment in these hospitals, nursing homes or clinics.

7) We direct the ICMR as well as NIREH to ensure that the research work is carried on with exactitude and expeditiousness and further to ensure disbursement of its complete benefit to the gas victims. We do not permit the research work to be carried out by any private/non- governmental institution, except the ICMR and NIREH.

8) The Government of India has already resolved to establish the NIREH and carry on the research work, for which it has been provided due infrastructure. Thus, we see no reason why the research work should not progress at the requisite pace in all fields while providing benefits for proper care and treatment of patients in the various hospitals in Bhopal. We further issue a clear direction to the Union of India and the State of Madhya Pradesh to render all assistance, financial or otherwise, to ensure that there is no impediment in the carrying on of the research work by the specialized institutions.

9) The Monitoring Committee must operationalize medical surveillance, computerization of medical information, publication of 'health booklets' etc. The Monitoring Committee shall also ensure that the 'health booklets' and 'smart cards' are provided to each gas victim irrespective of where such victim is being treated. This direction shall apply to all the hospitals run by the Government or otherwise, in Bhopal. We direct the State Government to provide assistance in all respects to the Empowered Monitoring Committee and take appropriate action against the erring officer/officials in the event of default.

We also direct complete computerization of the medical information in the Government as well as non-government hospital/clinics, which should be completed within a period of three months from today.

10) We are informed that there are large number of vacancies of doctors and supporting staff in the hospitals and allied departments. In the BGTRRD, 80 per cent posts of specialists and 30 per cent of doctors are lying vacant. Some posts are also lying vacant in the Fourth Grade staff. Thus, we direct the concerned authorities to take appropriate steps in all respects not only to fill up these vacancies but also to provide such infrastructure and facilities that the doctors are not compelled to or prefer to resign from BMHRC employment and its various departments, due to inadequate facilities.

11) The Union of India, the State Government and the ICMR should even consider the proposal for providing autonomy to BMHRC and even make it a teaching institution so as to provide attractive terms, studies and job satisfaction therein. This will not only help in providing better opportunities of employment but would better serve the purpose of providing care and treatment of high quality to the gas victims.

12) It is indisputable that huge toxic materials/waste is still lying in and around the factory of Union Carbide Corp. (I) Ltd. in Bhopal. Its very existence is hazardous to health. It needs to be disposed of at the earliest and in a scientific manner. Thus, we direct the Union of India and the State of Madhya Pradesh to take immediate steps for disposal of this toxic waste lying in and around the Union Carbide factory, Bhopal, on the recommendations of the Empowered Monitoring Committee, Advisory Committee and the NIREH within six months from today. The disposal should be strictly

in a scientific manner which may cause no further damage to human health and environment in Bhopal. We direct a collective meeting of these organizations to be held along with the Secretary to the Government of India and the Chief Secretary of the State of Madhya Pradesh within one month from today to finalize the entire scheme of disposal of the toxic wastes. The above direction is without prejudice to the appropriate orders or directions being issued by the court of competent jurisdiction.

13) The Advisory Committee, the Monitoring and the NIREH shall continue to file their respective quarterly reports before the High Court of Madhya Pradesh. These reports shall be dealt with and appropriate directions be passed by the High Court in accordance with law.

14) We have already noticed that the management of BMHT has already been vested in the Ministry of Health and Family Welfare, Government of India and the working of BMHT has come to an end. We, thus, direct that the Union of India and the State of Madhya Pradesh shall take appropriate steps to ensure the dissolution of the Trust in accordance with law. The BMHT was initially formed for a period of eight years and then was constituted for an indefinite period under the orders of this Court. In the facts and circumstances of the case and the subsequent events, we direct that BMHT shall stand dissolved. All concerned to take steps in accordance with law, under which it was created and/or registered.

15) The corpus of BMHT has already been ordered to be transferred to the Government of India and would remain under the control of the Ministry of Health and Family Welfare. If any other steps are required to be taken, they shall immediately be taken by the concerned Ministry. We further issue a clear direction that all the Fixed Deposit Receipts, RBI Bonds, Short Term Deposits and the bank balance of the BMHT, Bhopal, shall stand transferred and be under the control of the said Ministry. If any steps even in this regard are required to be taken, we direct all concerned to take appropriate steps.

16) Accounts of BMHRC and the allied departments, as far as they are subject matter of the present writ petition, shall be audited by the Principal Accountant General (Audit), Madhya Pradesh. It shall also examine the accounts and the audit report dated 15th July, 2011 submitted by M/s. V.K. Verma and Company within three months from today.

17) We also direct the State Government and the Monitoring Committee to evolve a methodology of common referral system amongst the various medical units under the erstwhile BMHRC and BGTRRD to ensure that the gas victims are referred to appropriate centres for proper diagnosis and treatment in terms of the nature and degree of injury suffered by each one of them.

18) We also direct that the Monitoring Committee, with the aid of the Advisory Committee, NIREH and the specialized doctors of BMHRC, issues a standardised protocol for treating each category of ailment that the gas victims may be suffering from. This shall be done expeditiously. It will be highly appreciated if the Committee also prescribes scientific categorization of patients and injuries.

19) Lastly, we direct all concerned in the Union of India, State of Madhya Pradesh, Empowered Monitoring Committee, Advisory Committee, ICMR, NIREH, BMHRC and all other Government or non-government departments/ agencies involved in the implementation of Relief and Rehabilitation Programme and research activity, to carry out the above directions expeditiously and without demur and default. We grant liberty to the applicants and/or the petitioners or any other affected person to move the High Court of Madhya Pradesh, Bench at Jabalpur, in the event of violation, non-compliance or default of any of the above directions or any other orders passed by this Court.

36. Before we part with this matter, we consider it our duty to place on record our appreciation for the able assistance rendered by the learned counsel appearing for the respective parties and the functions performed by the various Chairpersons and Committees constituted under the orders of the Court, including the Bhopal Memorial Hospital Trust.

37. This writ petition is transferred to the High Court of Madhya Pradesh in the above terms. All applications are disposed of accordingly.

38. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short the 'NGT Act') particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule 1 should be instituted and litigated before the National Green Tribunal (for short 'NGT'). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and the NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before the NGT. This will help in rendering expeditious and specialized justice in the field of environment to all concerned.

39. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialized tribunal, that is the NGT, created under the provisions of the NGT Act. The Courts may be well advised to direct transfer of such cases to the NGT in its discretion, as it will be in the fitness of administration of justice.

40. Normally, we would have even transferred this case to NGT. However, as it does not involve any complex or other environmental issues and primarily requires administrative supervision for proper execution of the orders of the Courts, we have considered it appropriate to transfer this case to the High Court of Madhya Pradesh. We may notice that the supervisory work concerns itself with regard to the proper functioning of the various Committees, which were constituted under the orders of the Court, to ensure proper running of the hospital established by the government and health care facilities available to the Bhopal Gas victims. Thus, the matter should be heard and supervisory jurisdiction be exercised by the High Court to better serve the ends of justice.

41. The Registry is directed to transmit the records of the Writ Petition No. 50/1998 to the Madhya Pradesh High Court, Bench at Jabalpur, forthwith and also send copies of this order to all concerned

quarters of the Union of India, the State of Madhya Pradesh, the Monitoring Committee, the Advisory Committee, ICMR, BMHRC and the NIREH for compliance of these directions without delay and default.

.....CJI.

(S.H. Kapadia)J. (A.K. Patnaik)J. (Swatanter
Kumar) New Delhi August 09, 2012