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ANNEXURE - P. 4

SUO-MOTO REVISIONAL COURT, BHOPAL GAS VICTIMS, BHOPAL

Presents:

Justice R.S. Garg
Welfare Commissioner
Bhopal Gas Victims
Bhopal.

Unregistered Petition of 2008
(Filed on 28.8.2008)

1. Abdul Jabbar Khan
2. Hamida Bi
3. Mohini Devi
4. Mohd. Idris
5. Ralse Bi
6. Shazia .
7. Mohd. Salim
8. Prem Narayan Verma, and
9. M.K. Balan

[All Residents of Bhopal, Claimants in their respective '01' Category Claim Cases. No.1 - Convenor, Nos. 2 to 7 - Members of Bhopal Gas Peedit Mahila Udyog Sangathan (BGPMUS); Nos. 8 & 9 - Members of Bhopal Gas Peedit Sangharsh Sahayog Samiti (BGPSSS)]



Ms. Indira Jaisingh,
Learned Senior Counsel
with Shri Mahak Sethi

;; Advocate for the Petitioners

Ms. Anjali Banerjee

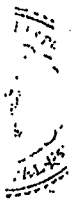
;; Learned Counsel for the
Department and Union of India.

ORDER

(Passed on this 31st day of January 2009)

1. This petition has been filed under Clause 5.2(o) and Clause 13(2) of the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 by 9 Members of the Bhopal Gas Peedit Mahila Udyog Samiti (BGPMUS) and the Bhopal Gas Peedit Sahyog Sangarsh Samiti (BGPSSS) in the interest of 101000 aggrieved Bhopal Gas Victims, who had signed petitions before the Hon'ble Supreme Court to award just compensation to the gas victims.

2. The petitioner have prayed that the petitioners/claimants, who were paid compensation in the terms of Rupee, on the date of the award, should be paid compensation at the conversion value of the US\$ vis-à-vis Rupee prevailing at the time of the settlement in 1989. To clear, argument is that if in the year 1989 a victim was entitled to Rs.1.00 lakh, then the said amount of Rs.1.00 lakh be converted into US\$ at the conversion rate in 1989, and then the said US\$ be paid to the victims on the date of the award or the conversion value in Rupee be paid to the victim on the date of the Award.



That the claimants are entitled to interest at the current rate of annual interest from the date of enactment of the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 till the date of award of compensation on the amount of compensation awarded to each claimant as per provisions of Section 3 of the Interest Act, 1978.

All victims, who have suffered injuries as a result of the Bhopal Gas Leak Disaster and are forced to seek medical treatment even 25 years after the disaster should be categorized as permanently injured and such victims, who were paid compensation for temporary injury, their compensation should be enhanced and they be treated as permanently injured. They have further prayed that an Order be passed to direct Union of India to augment the settlement fund in terms of the actual magnitude of the disaster. The petitioners have also prayed to permit them to scrutinize the medical records and examine the methodology adopted for determining the causative factor of the death in the claim cases, which were converted from death to injury, was due to disaster related injury suffered by the victims or not.

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A further prayer has been made that till the decision of the petition, the records of the claim victims, be kept in safe custody and not eliminated.

3. Ms. Indra Jaisingh learned counsel for the petitioners contended that the petition deserves to be allowed on the ground that in (1989) 3 SCC 38 Hon'ble Supreme Court calculated the settlement amount of 470 Million US Dollar or Rs.750/- crores on the assumption that the number of death under '04' category were around 3000 and the number of those who suffered injuries under category '01' were around 1,01,000. On these assumptions amount in death '04' and injury '01' cases were fixed in the range of Rs.1.00 lac to 3.00 lacs and Rs.25,000/- to Rs.4.00 lacs, respectively. Details of settlement scheme are described in tabulated form on Paras 22, 24, 25 & 27 in Order dated 4.5.1989 (Supra). It was submitted that now as per the available authentic figure as different category of cases, number of awarded cases is 5,74,366. When authentic figures are available appropriate directions may be issued to the Union of India to pay compensation five times more to gas victims under both the heads 'Death' (Category '04') and 'Injury' (Category '01'). 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. It was submitted that had the amount been awarded in 1989 and compensation was disbursed to the claimants in 1992 the Dollar-Rupee exchange rate being approximately 1:15 (1\$ = 15 Rs.) in 1989 the claimants could get more US\$. The submission further is that payment under exchange rate of 2002, (1:47) could be made. It was also submitted that claimants are also entitled to Interest on the amount of compensation under Section 3 of the Interest Act, 1978.



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(Signature)
 Addl. Secy. to the Commission
 Bhopal Gas Tragedy Victims
 Bhopal

It has further been argued that the ICMR is coming up with the report that because of the MIC gas leak, not only people are dying but have been genetically affected, which will have adverse effect on future generation, therefore, also the compensation should be enhanced.

4. Ms. Anjali Banerjee, learned Counsel for the Department and Union of India, on the other hand, submitted that the petition suffers from several legal flaws and laches and is not maintainable. Clause 5.2(O) and Clause 13(2) of the Scheme, 1985 relate to filing and adjudication of the claims by the Dy. Commissioner and the Additional Welfare Commissioner. In the present petition no one has been arrayed as respondent, it is not clear against whom the petition is directed. However, it appears that petitioners want relief against Union of India. It was submitted that the present petition is misconceived and not maintainable. The present petition is neither an appeal nor a revision or a review and deserves to be dismissed. It is further submitted that as directed by the Supreme Court on 19.7.2004 claimants were paid identical amount on pro-rata basis as awarded to them in the first round. Petitioners are not entitled to payment of interest on the amount of compensation. It was further submitted that petition has been filed with the ulterior motive to hinder the ongoing winding up process in the Organisation of the Welfare Commissioner, Bhopal Gas Victims, Bhopal. The remedy available to the petitioners is not to approach this Court by filing petition. It was, therefore, submitted that the petition is liable to be dismissed.

5. In order to fully appreciate the contentions raised by the petitioners and to decide the petition, it will be necessary to trace the legal history of the litigation concerning the Bhopal Gas Leak Disaster. The Bhopal Gas leak Tragedy occurred on the intervening night of 2nd/3rd December, 1984 in which



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deadly chemical fumes from the Union Carbide Pesticide Factory leaked by which horrendous industrial mass disaster, unparalleled in its magnitude, resulted in an immediate toll of 2660 innocent human lives and left thousands of innocent citizens of Bhopal physically impaired.

6. Soon after the gas disaster claims were filed against the Union Carbide Corporation and UCIL in USA and some suits were also filed in the District Court of Bhopal. The Union of India filed suit for damages in the District Court Bhopal in which on 17th December, 1987 an Order for Interim Relief amounting to Rs.350.00 crores to the gas victims was passed. The High Court, on revision, modified the Order of District Judge and granted Interim Relief of Rs.250.00 crores. The matter came to Supreme Court by Special Leave. While the matter was being argued, a settlement was arrived at between the Union of India and the Union Carbide Corporation under which a sum of Rs.470.00 million US Dollars was agreed to be paid by UCC to Union of India in full settlement of all claims of all victims of gas leak against the UCC. This settlement received imprimatur of the Supreme Court in its Order dated 14th, 15th February, 1989, 1 SCC 674; [1989 SCC (Cri) 243]. The reasons for the settlement Order were given by the Supreme Court on May 4th 1989 (1989 3 SCC 83).



7. Bhopal Gas Leak Disaster Processing of Claims Act, 1985 was passed on 29th March, 1989, its constitutionality was challenged on various grounds in 1991 SCC. The Hon'ble Supreme Court held the Act constitutionally valid.

8. On March 29, 1989 the Hon'ble Supreme Court looking to the magnitude of the human suffering that occurred due to Bhopal Gas Disaster and the felt urgency to provide immediate and substantial relief to the victims of the disaster passed a settlement order directing the Union Carbide Corporation to pay a sum of 470 million US\$ to the Union of India as full

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settlement of claimants' rights and liabilities related and raising out of the Bhopal Gas Leak Disaster.

In the settlement order the number of persons affected by the disaster was not an issue/ground for settlement. The basic consideration which has motivated the conclusion of the settlement was the compelling need of urgent relief.

9. The question, as to how good or reasonable the settlement was agitated before the Hon'ble Supreme Court and while assessing the settlement amount the Hon'ble Supreme Court took into consideration the amount disclosed by the offers and counter offers between the parties, which was 426 million US\$ and 500 US\$. The Court also considered certain materials available on the records including the estimates made by the High Court of Madhya Pradesh and also certain figures referred in the Court during argument. The Court observed that looking to the nature of the situation and the circumstances assessable number of the claims being genuine or otherwise exaggerated can not be ruled out.

The Hon'ble Supreme Court looking to all the circumstances and material on record held that *"the idea of reasonableness of the compensation for the present purpose is necessarily a broad and general estimate in the context of a settlement of the dispute and not on the basis of accurate assessment by adjudication"*.

Further the Court held "However, 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 the purpose of an overall view of the adequacy of the amount".

10. As regards the contention of the petitioners that while giving compensation some of the essential elements



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relevant to fairness and adequacy such as future medical surveillance, unforeseen manifestation of toxic injury has not been kept in mind is concerned, the point has been taken into consideration by the Hon'ble Supreme Court in Union Carbide Corpn. Vs. Union of India, 1991 4 SCC, in which Hon'ble Supreme Court held that "in dealing with the issue of exposed members of the people of Bhopal, who were put at risk and who, though presently asymptomatic and filed no claim for compensation might become symptomatic in future. Cases of yet unborn children of mothers exposed to MIC toxicity were the children, who have found to have developed congenital defects. How to provide compensation to them. In Para 207 of the Judgment the Hon'ble Supreme Court held that appropriate medical group insurance be done and the General Insurance Corporation of India or the Life Insurance Corporation of India should take care of such contingencies. It is further held that the premium for the insurance shall be paid by the Union of India out of the settlement fund and the eligible claimants, who are entitled to be paid, can be paid by the insurer, compensation on such principles and upon establishment of the nature of gas related toxicity morbidity by such medical standards as are applicable to the other claims under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and the Scheme framed thereunder.

Thus, the argument that at the time of settlement the Court did not consider the effect of MIC gas on the future generations and looking to the ICMR Report compensation should be enhanced, is without any basis. If any petitioner/ claimant has any grievance against the Orders passed by the Claims Tribunal or is dissatisfied by the adjudication, he has to agitate the matter under the provisions of the Act and they have the legal remedy to approach the



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Hon'ble Supreme Court as per the procedure recognized by law.

11. Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 deals with the claims arising out of the Bhopal Gas Leak Disaster or connected with the disaster for compensation of damages for loss of life or any personal injury, which has been or is likely to be caused and also claims arising out of or connected with the disaster for any damages to property or claims for expenses incurred or required to be incurred; or otherwise coping with the impact of the disaster and other incidental claims. In exercise of the powers under Section 9, of the said act the Central Government framed the Bhopal Gas Leak Disaster (Registration & Processing of Claims) Scheme, 1985 which the authority for registration of claims and filing of claims, categorization, maintenance of record, etc procedures were framed.



Under Section 10(l) of the scheme there shall be created and maintained by the Central Government a Fund to be called "the Claims and Relief Fund". Any amount which is required to given as compensation to the victims of gas claims, has to be disbursed from the "Claim and Relief Fund" created under the Scheme. The said fund shall include the amounts received in satisfaction of the claims and any other amounts made available to the Commissioner as donation for relief purposes. The Scheme further goes on to enumerate the purpose for which the said fund is to be used including disbursement of amounts in settlement of claims registered with the Dy. Commissioners and apportionment of the Part of the fund for disbursement of amounts in settlement of claims arising in future.

Under the Scheme the Central Government was given the powers to determine the total amount of compensation to apportion for which category of claims and the quantum of compensation payable in general in relation to each type of

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Injury or loss. Section 11(4) lays down how the quantum of compensation payable to the claims within different categories will be determined and in Sub-section 5 there is provision that in an event of dispute as to the disbursal of the amounts received in satisfaction of the claims, an appeal against the Order of the Dy. Commissioner lies to the Addl. Commissioner. Powers of Suo Motu Revision have also been given to the Addl. Commissioner and the Welfare Commissioner and provisions have been made that where the Order in revision is likely to be prejudicial to the interest of the claimant, reasonable opportunity of showing cause against the proposed Order will be given to him.

12. From the Act and the Judgment of the Hon'ble Supreme Court 1990(1) SCC 613, the claim cases were to be decided after proper adjudication and the basis of categorization and the actual categorization are made justiceable and judicially reviewable.

The Act and the Scheme provides for objective and quasi judicial determination of compensation payable to the victims of the tragedy. There is no evidence or material on record to suggest that the Claims Tribunals were not objective in their adjudication and tried to cut down the amount of compensation, so as not exceed the settlement amount received from the Union Carbide Corporation. The settlement with UCC only put an end to claim against UCC and UCIL. It did not affect the victims right to his claims.

Here it will not be out of place to mention that the original claims were adjudicated in 2003. At that time no question was raised that the quantum of compensation was inadequate because of the settlement. On the other hand the amount remaining after payment of compensation amount of Rs.1503 crores, was later on disbursed by the Orders of the



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Hon'ble Supreme Court to the Claimants on the principle of Pro-rata.

13. As held in 1991 4 SCC 584, the petitioners seriously assailed the correctness of the guidelines for medical evaluation and also the results of the actual operational process of evaluation based thereon. The Hon'ble Supreme Court held that particular care has gone into the prescription of the medical documentation tests and the formulation of the results for purposes of evaluation and categorization.

14. In Union Carbide Corporation & Others Vs. Union of India & Other (1991) 4 SCC 584 the Hon'ble Supreme Court ensured that no victim of Bhopal Gas Tragedy would be deprived of the benefit to which he/she is otherwise entitled. In case the settlement fund is found to be insufficient, the deficiency is to be made good by the Union of India.



The petitioners argument that they should have been paid in Dollars, as the amount of settlement was received in Dollars, also does not hold ground. As mentioned above, the settlement amount is part of the claims fund created by the Government of India under Section 10 of the Bhopal Gas Leak Disaster (Processing & Registration of Claims) Scheme, 1985 and nowhere in the Act has it been mentioned that the total payment received in the settlement was to be disbursed to the gas victims or any interest that accrued on that amount was also to be disbursed to the gas victims alone. On the contrary, under Section 10 of the Scheme the claims fund has to be utilized not only to settle the claims, but also for relief purposes.

16. In Union Carbide India Ltd. & Others Vs. Union of India & Others, 1995 Supp. (4) SCC 537 the settlement amount, which was deposited with the Registrar of the Supreme Court, was transferred to Reserve Bank of India strictly subject to following conditions:-

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Additional Secretary
Bhopal Gas Tragedy Claims
Bhopal

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8(I) That no part of this Fund shall be withdrawn or utilized to meet any administrative expenses or diverted for any purpose other than payment to or applied in satisfaction of the claims of the victims towards compensation determined according to law. The Fund may also be utilized for payment of insurance premia as the scheme of insurance indicated in the review order.

(II) No part of the Fund shall either be appropriated towards payment of any interim relief in future or applied for reimbursement of such interim relief already granted. This will not come in the way of Government deducting the interim relief from the compensation finally determined, as indicated in the earlier order of this Court.



No part of the Fund shall be released by the Reserve Bank of India except upon a certificate from the Welfare Commissioner that the amount represents substantially the quantum of the compensation determined from time to time against the claims of the victims. The withdrawal or release of the funds from the account from time to time shall broadly, though not mathematically, correspond to the quantum of compensation actually determined from time to time.

(iv) The transfer of the accounts from the Registrar of this Court to the Welfare Commissioner shall not bring about any change in the initial conditions for the deposits, in particular those contained in the letter dated 14.3.1989 from the Reserve Bank of India to the Registrar, Supreme Court of India.

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(v) In particular, wherever any withdrawal is made from the dollar deposit or sums representing that deposit, the benefit of the dollar/rupee exchange rate as prevailing on the date of actual withdrawal shall continue to be available and such exchange rates at the time of actual withdrawal (or the exchange rate as on the date of initial deposit, whichever is higher) shall be applied. The expression 'material -date' clause (c) of the prayer column in IA Nos. 16 and 17 of 1992 shall be construed accordingly.



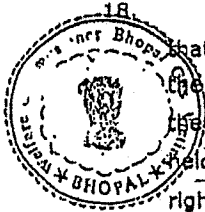
and the Court accepted the submission that while withdrawing funds the rupee deposit and the amounts representing accrued interest, should be utilized and progressively exhausted so that the benefit of any prospect of higher exchange rate of dollar may be preserved, as this would protect the interests of the victims in the event of increase in the exchange rate of the dollar. From above Para (i) it would clearly appear that the fund is to be used for making payment towards compensation as determined. The process of determination was to be undertaken by us. The Apex Court never said that amount of compensation was to be determined in US\$. In fact, the Apex Court in Para (v) to maintain the position of the fund directed that regard be had to the conversion rate. Thus, the question of making payment in dollar does not arise.

17. Now coming to the maintainability of the present petition, on May 4, 2007, Supreme Court dismissed two interlocutory applications filed by 'BGMUS' and 'BGPSSS' (the petitioners before me). These I.A. Nos.48-49 filed in two disposed of Civil Appeal Nos.3187-3188 of 1988 were for issuing appropriate Writ, direction or Order to re-examine the inadequacy of Bhopal Gas Settlement, to direct Government of India to

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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 account 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.



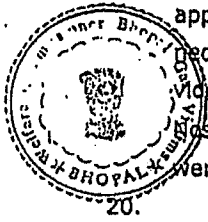
Dismissing I.A. No.48-49 the Supreme Court observed that no case had been made out to issue any directions; since the Act has been enacted, a Scheme has been framed under the Act and the Procedure has been laid down, which has been held to be constitutional and intra vires, which protect the rights of the victims.

The Court held *"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 currency and even under the Scheme, such amount is fixed in Indian*

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Rupees. We, therefore, see no grievance now can be made on that issue.

19. The petitioners claim to represent 1,01,000 aggrieved Bhopal Gas Victims, for which they have filed a C.D. containing the names of the petitioners. No power of attorney or letter of authorization to file the petition has been filed. Out of the claimants of 5,74,367 awarded cases only 1,01,000 claimants had been chosen to file the petition. This choice being arbitrary turns the petition misrepresentative. Not only this the petition is misleading too. The reason being that it has been filed averring in the opening paragraph of the petition that petitioner had withdrawn the clarification/modification applications before the Supreme Court in order to first seek necessary clarifications from this Court. It is not true, in fact, vide Order dated 25.2.2008 Supreme Court disposed of I.A. Nos. 1-2 filed by the petitioners as withdrawn. Petitioners were not given liberty to approach this Court.



20. In I.A. Nos.48-49 in Civil Appeal Nos.3187-88 of 1988 BGP MUS and another Vs. Union of India & Others, although O/o The Welfare Commissioner, Bhopal Gas Victims, Bhopal was not arrayed as party but Paragraph 4 of Prayer Clause of these IAs. Runs as follows:-

4. "Pass an Order directing the Welfare Commissioner to provide detailed information regarding the process of identification and categorization of the gas victims and the manner of disbursement of compensation amounts as follows:-

(Para 4 consists of 4 Sub-paras namely a, b, c and d)"

21. In view of the above prayer clauses the absence of the name/names of the respondents in the Cause title of the present petition assumes significance and renders it not maintainable.

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22. Initially 6,18,659 cases (known as Old Cases) were registered in the Office of the Director of Claims. In pursuance of the Notification dated 2.12.1996, 4,10,858 Claim Cases (Known as new cases) were received. One case was registered in compliance of Delhi High Court's Order in Ramrati's case. Thus, in all 10,20,517 were filed by the gas victims. All these cases have been disposed of by the Deputy Welfare Commissioner's Tribunals in accordance with the 'Act' and the 'Scheme'. Out of these disposed of 10,29,517 cases, in 3,63,159 old cases and 2,11,211 new cases (Total 5,74,367 cases), awards have been made while 2,55,503 old cases and 1,99,647 new cases (Total 4,55,150 cases) have been rejected. An amount of Rs.1548.95 crores as main compensation has been disbursed. On 19.7.2004 Reserve Bank of India informed the Supreme Court that the unspent amount lying with them was Rs.1503.00 crores (money available in the account plus likely exchange rate variation) on request of Union of India while deciding I.A. Nos.46-47 in Civil Appeal No.3187-88 of 1988 Supreme Court directed disbursement of the remaining amount of compensation to the persons, whose claims have been settled, on pro-rata basis after having due regard to the number of claims settled, unsettled and pending. The Office of the Welfare Commissioner disbursed an amount of Rs.1509.14 crores under pro-rata compensation (All these figures are as on 31.12.2008).
23. In the light of the above statistics it is to be noted here that including the amount of pro-rata compensation nearly six times higher amount of compensation in comparison with the Motor Vehicle Accident claims, has been disbursed to all the gas victims who were found eligible for compensation in the process of adjudication of their cases.
24. It would not be out of place to mention here that petition is not clear in respect that who were those specific claimants to whom the rough and ready estimate based on broad and general assumptions made in (1989) 3 SCC 38 was concerned. Given the fact that number of awarded cases

is 5,74,367 and petitioners want to differentiate themselves from other similar situated claimants that too without any basis, petition becomes misconceived and misrepresentative.

Apart from this, the question of re-examination of settlement or inadequacy can not be raised before me, as the said issues have already been decided by the Supreme Court (Union Carbide Corporation Vs. Union of India & Others (1989) 1 SCC 674) Paras 21 to 24 and Union Carbide Corporation Vs. Union of India & Others (1989) 3 SCC 38 Para 29 & 30.

25. The claim of the petitioners for the payment of interest on the amount of compensation as per provisions of Section 3 of the Interest Act, 1978 is not maintainable. Government of India (GOI) Memo No.21/2/92-CHI New Delhi dated 13.4.1992 issued in pursuance of the powers conferred on it, clarified that the 'SCHEME' does not envisage payment of interest on the amount awarded as compensation. Division bench of High Court of Madhya Pradesh while allowing review application vide Order dated 16.4.2004 in M.C.C. No.490 of 2004 (Union of India Vs. Smt. Sumitra Saini) maintained that in view of the Government of India Guidelines (above mentioned) no interest is payable on the awarded amount of Bhopal Gas Claim Cases. This finding is sufficient to disentitle the petitioners from claiming interest. In this view of the matter Judgment of Delhi High Court dated 24.4.2003 in CWP 4567/1997, Association of Victims of Uphar Cinema and Ors. Vs. Union of India and Ors. & Common Cause Vs. Government of NCT of Delhi and Ors. is of no help to the petitioners.
26. Under Clause 5.2(O) and Clause 13(2) of the 'SCHEME' it is apparent that they relate with filing and adjudication of claims before Deputy Commissioners and Addl. Welfare Commissioner. These provisions do not deal with the adjudication by the Welfare Commissioner. The present petition doesn't fall in the category of Claim, Appeal, Revision or Review and is not maintainable. It is pertinent to note here that this Court functions in accordance with the 'Act', 'Scheme', 'Procedure' and 'Guidelines' and not otherwise. This Court has no Writ jurisdiction under Article 226 and 227 of the Constitution of India.

27. Last but not the least, mere perusal and bare reading of the Orders dated May 4, 2007 (Annexure-1) and 25.2.2008 of the Supreme Court is sufficient to prove that the main issues raised by the petitioners before me had, already, been considered by the Supreme Court. After the dismissal of the I.As. by the Supreme Court, almost identical petitions have been filed before us. The petitioners are trying to 'Put the Cart before the Horse'. The same is not permissible in any way. Under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and the Scheme framed there under, 1002367 claims were filed, which have been adjudicated and finally decided. Now permitting re-examination of record to find out the basis of medical documentation is not under the scope of the Act, thus, there is no justification to give any permission to the petitioners, as prayed by them. More so when through out the adjudication proceedings, the petitioners did not challenge the basis of documentation and categorization. Even otherwise the petitioners are neither the Higher Tribunals nor the Higher Court, which can examine the correctness, validity and propriety of the Awards made by us. Further, the ICMR Report has not been placed before the Tribunal nor has any such report, was produced in evidence. In future any such report, if, it is published or made public, it will be for the Union of India, as a Welfare State, to consider the same and take action accordingly, but, under the Act and the Scheme there is no provision for the Welfare Commissioner to evaluate any such report and take action on the same or issue any directions to the Union of India or State to provide additional funds for payment to the claimants.

28. As regards the question of not to eliminate Part 'B' of the Record of adjudicated claim cases is concerned, under the Scheme, Guidelines, were framed and provisions were made that after date of final adjudication the records have to be preserved for 8 years. Therefore, all the records in which final adjudication has taken place and 8 years have lapsed, there is no legal necessity to preserve such records. Still the Office of the Welfare Commissioner has kept the original

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documents, concerning medical documentation, in safe custody
alongwith Part 'A' of the record and the same is to be preserved.
In view of the aforesaid analysis and discussion and in the backdrop of
the facts and circumstances mentioned hereinabove, I am of the
considered opinion that no case has been made out to issue any
direction, order or orders on the petition. Petition is not well founded,
rather, it is misrepresentative and misleading and as such it is ordered
to be dismissed. In the facts and circumstances of the case, however,
there shall be no order as to costs.

(Justice R.S. Garg)
Welfare Commissioner,
Bhopal Gas Victims,
Bhopal.

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