

**IN THE SUPREME COURT OF INDIA**

**ORIGINAL JURISDICTION**

**I.A. NO. 2 -3 OF 2012**

**IN**

**SPECIAL LEAVE PETITION (C) NO. 9874 OF 2012**

**IN THE MATTER OF:-**

Union of India

.....Petitioner

Versus

Alok Pratap Singh & Ors.

....Respondents

**AND**

**IN THE MATTER OF:-**

State of Madhya Pradesh

....Applicant/Respondent

No.3

**AFFIDAVIT ON BEHALF OF STATE OF MADHYA  
PRADESH/APPLICANT/RESPONDENT NO.3 IN RESPONSE  
TO FIFTH SUPPLEMENTARY AFFIDAVIT OF UNION OF  
INDIA**

I, Mukesh Varshney S/o Late Shri M.P. Varshney aged about 55 years, Commissioner, Bhopal Gas Tragedy Relief and Rehabilitation Department (BGTR&R) Department, Government of Madhya Pradesh, Bhopal presently at New Delhi do hereby solemnly affirm and state on oath as under:-

1. That I am the officer in charge appointed in the present case on behalf of the State of M.P./Applicant/Respondent No.3 and conversant with the facts and circumstances of the present case and as such I am competent to swear this affidavit.
2. That this Hon'ble Court vide its order dated 03.01.2013 permitted/directed the Central Pollution Control Board (CPCB) to examine the facility available at Pithampur TSDF, State of M.P. and to submit a report about the feasibility of disposal of the waste at Pithampur TSDF.
3. The abovementioned matter was again listed on 28.01.2013 wherein, this Hon'ble Court was informed by the Ld. Solicitor General appearing for Union of India that the report of the test incineration done at the Treatment, Storage and Disposal Facility (TSDF), Pithampur, Madhya Pradesh has been received from the Central Pollution Control Board (CPCB) and requested for seven days time to file the report alongwith an affidavit. This Hon'ble Court vide order its dated 28.01.2013 permitted the Union of India to file the report of CPCB alongwith an affidavit within a period of seven days and granted further period

of seven days to the State of Madhya Pradesh applicant herein for filing their objections to the said report.

4. That the Central Pollution Control Board (CPCB) on 27/28.01.2013 filed its report of the test incineration done at the Treatment, Storage and Disposal Facility (TSTF), Pithampur, Madhya Pradesh. A copy of the report dated 27/28.01.2013 submitted by Central Pollution Control Board (CPCB) is marked and filed as ANNEXURE A-1.

(Page No. 14 to 31)

5. The objections of the State of M.P. to the report dated 27/28.01.2013 submitted by Central Pollution Control Board (CPCB) are as follows:-

- i) Nature of waste used in conducting the trial/test run:

- (a) The Group of Ministers (GoM) reconstituted to examine all issues relating to Bhopal Gas Leak Disaster in its meeting held on 22.10.2012 in paragraph 6 accepted the recommendation of the Secretary, Environment and Forests, and Member Secretary, Central Pollution Control Board (CPCB) to conduct a trial/rest run at TSTF, Pithampur with other similar waste in

order to determine the feasibility and technical capability of the TSDF, Pithampur to dispose 350 M.T. of toxic waste lying at UCIL premises by the method of incineration. A true copy of the minutes of the meeting dated 22.10.2012 of Group of Minister (GoM) is marked and filed as ANNEXURE A-2. (Page A-32 to 41)

(b) That the Central Pollution Control Board (CPCB) in total defiance of the minutes of the meeting dated 22.10.2012 of Group of Minister (GoM) conducted the trial/test run at TSDF, Pithampur with the industrial waste instead of toxic waste similar to the waste lying at the UCIL factory in Bhopal. The Union of India in its four supplementary affidavit dated .....in paragraph 3 has categorically admitted that the trial/test run at TSDF, Pithampur was being conducted with industrial waste instead of similar toxic waste lying at UCIL factory in Bhopal. A true copy of supplementary affidavit dated..... filed by

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- (b) That the Central Pollution Control Board (CPCB) in total defiance of the minutes of the meeting dated 22.10.2012 of Group of Minister (GoM) conducted the trial/test run at TSDF, Pithampur with the industrial waste instead of toxic waste similar to the waste lying at the UCIL factory in Bhopal. The Union of India in its four supplementary affidavit dated .....in paragraph 3 has categorically admitted that the trial/test run at TSDF, Pithampur was being conducted with industrial waste instead of similar toxic waste lying at UCIL factory in Bhopal. A true copy of supplementary affidavit dated..... filed by

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Union of India is marked and filed as  
ANNEXURE A-3 (Page No 420-425)

- (c) The toxic waste lying at UCIL factory in Bhopal is a chemical waste contenting pesticides which is categorized as Hazardous Waste in entry no. 29 in schedule 1 of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008.
- (d) The industrial waste which has been used by the Central Pollution Control Board (CPCB) for conducting the trial/test run at TSDF, Pithampur comprised of paint sludge oil soaked cotton ETP Sludge and Pharmaceutical waste categorized under entries 5.21, 28 of Schedule 1 of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 which is totally different from the chemical toxic waste lying at UCIL factory premises in Bhopal as well as the waste indicated in paragraph 6 of the minutes of the meeting of the GoM dated 22.10.2012.

(e) In view of the fact that the trial/test run at TSDF, Pithampur has been conducted with totally different waste in defiance of the minutes of the meeting dated 22.10.2012 and considering the fact that the waste with which the trial run was conducted was totally different from the chemical toxic waste lying at UCIL factory in Bhopal, the report dated 27/28.01.2013 submitted by the CPCB may not be accepted by this Hon'ble Court as the report did not present the clear picture with regard to the technical capability of facility in Pithampur, State of M.P. for disposing the toxic waste.

**ii) Reasonable apprehension of danger to the life and limb of people leaving in near vicinity of TSDF, Pithampur:**

(a) **The facility in Pithampur/State of M.P. is surrounded by habitation of people which may be exposed to the side effect of gases/fuels which may release while incinerating the toxic waste of UCIL factory in Bhopal.**

(b) The Tarapura village comprising of 105 houses is only 250 meters away from the premises of the TSDF facility Pithampur and the people leaving in this village need to be relocated before conducting incinerating the Bhopal Gas toxic waste which is highly hazardous nature considering its composition. A true copy of the Google Map showing the location of the TSDF Pithampur, State of M.P. is marked and filed as ANNEXURE A-4 (Page 46)

(c) Within the distance of two-three kilometers from TSDF, Pithampur there is developed industrial sector and if any misshaping take place while incinerating the Bhopal Gas toxic waste it will adversely affect the industrial sector also and the people working in the industries.

(d) This Hon'ble Court in its order dated 11.05.2012 passed in the abovementioned matter while deferring implementation of the earlier order dated 04.04.2012 took note of the possible adverse impact on the people leaving



the site at Pithampur. A true copy of the order dated 11.05.2012 passed by this Hon'ble Court in I.A. No. 2-3 in SLP (C) No. 9874 of 2012 is marked and filed as ANNEXURE A-5. (फाइल) (उत्तर)

(e) In view of the fact that the trial/test run conducted at TSDF, Pithampur has been conducted with the waste which is totally waste from the Bhopal Gas toxic waste it will be in the interest of all the parties and the public at large leaving nearby TSDF, Pithampur that again a trial/test run the conducted at Pithampur facility with the other similar waste as decided by the Group of Minister (GoM) in its meeting held on 22.10.2012.

iii) Technical Parameters not satisfied by TSDF, Pithampur:

(a) The Madhya Pradesh Pollution Control Board (MPPCB) closely monitored the performance of TSDF, Pithampur during the trial/test run conducted with the industrial waste from

03.12.2012 to 08.12.2012 and 01.12.2013 to 15.01.2013.

(b) The Madhya Pradesh Pollution Control Board (MPPCB) prepared an ambience analysis report of the performance of TSDF, Pithampur during the trial/test run conducted with the industrial waste from 03.12.2012 to 08.12.2012 and 01.12.2013 to 15.01.2013 and found that the suspended particulate matter during the test run of the industrial waste exceeded the permissible limit. A copy of the analysis report of Madhya Pradesh Pollution Control Board (MPPCB) from 03.12.2012 to 08.12.2012 and 01.12.2013 to 15.01.2013 is marked and filed as ANNEXURE A-6 (फैसल सतोस)

(c) In view of the fact that the suspended particulate matter exceeded the permissible limit during the trial/test run conducted at TSDF, Pithampur of the industrial waste which is totally different from Bhopal Gas toxic waste, it can be safely presumed that the facility is not

technically sound for incineration of the Bhopal Gas toxic waste.

(d) Even the Central Pollution Control Board (CPCB) in its report dated 27/28.01.2013 in paragraph 1 has stated that the performance of the incinerator was improved by enhancing the feed of activated carbon. This finding of CPCB clearly shows that the facility at Pithampur is not technically sound for incineration of the Bhopal gas toxic waste which is more hazardous in comparison to industrial waste.

iv) The State of M.P. most respectfully submits that from the report dated 27/28.01.2013 it is quite apparent that during the trial run increase in stack emission of Hydrogen Chloride, Carbon Monoxide, Carbon Dioxide has been noticed which requires for observation of the facility at Pithampur for some longer time as the trial run which was conducted for three days (12.01.2013 to 15.01.2013) has shown many variations in the stack emission. Therefore before taking final decision of incineration of Bhopal Gas toxic waste TSDF, Pithampur it is necessary that a

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complete and concrete report shall be placed before this Hon'ble Court regarding the technical capability of the facility.

v) **No information about the other 21 incinerators:**

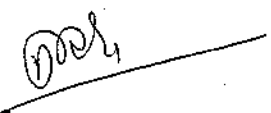
(a) The Ld. Solicitor General of India through his letter which found mentioned in paragraph 7 of the minutes of the meeting dated 22.10.2012 of GoM has suggested the Secretary, Environment and Forest, Government of India to identify the other 21 incinerators and list them on the basis of technical capabilities with preference being given to technically most competent incinerators for disposing of the toxic waste.

(b) The Union of India in its fourth supplementary affidavit has stated that they are examining the technically capabilities of others 21 incinerators for the disposal of the Bhopal Gas toxic waste but in the present/fifth supplementary affidavit no status of the 21 incinerators has been given by the Union of India.

- vi) The CPCB in Annexure III of its report dated 27/28.01.2013 has burdened the State of Madhya Pradesh with the cost of packaging, transportation and incineration of 10 tonnes of UCIL waste which is contrary to paragraph 6 of the Minutes of the Meeting dated 22.10.2012 of the GoM wherein it was decided that the CPCB will carry out the test incineration.
6. In view of the facts and circumstances the State of M.P. most respectfully submits that this Hon'ble Court may not accept the report dated 27/28.01.2013 submitted by (CPCB) as the same does not reflect the true status with regard to technical capability of facility at Pithampur for disposal the toxic waste for disposing the Bhopal Gas toxic waste as the test/trial run was conducted with the waste which was totally different from the waste similar to the Bhopal Gas toxic waste as decided in the meeting dated 22.10.2012 of Group of Minister (GoM).
7. That the contents of this affidavit are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

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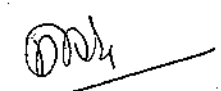
8. That the annexures/documents filed are true copies their respective originals.



DEPONENT

**VERIFICATION**

Verified at New Delhi on this 08<sup>th</sup> day of February, 2013 that the contents in the aforesaid affidavit are true and correct to the best of my knowledge and belief.



DEPONENT