

Supreme Court of India

Union Carbide Corporation Ltd. vs Union Of India (Uoi) And Ors. on 10 December, 1993

Equivalent citations: 1994 (1) SCALE 4, 1994 Supp (3) SCC 328

Bench: M Venkatachaliah, S Mohan

ORDER

1. By these applications, the Union of India further seeks directions of the Court for the implementation of certain directions issued in the course of the Review Order dated 3rd October, 1991 arising out of the Court-assisted settlement in what is known as the Bhopal gas leak disaster case. Civil Suit No. 1113 of 1986 on the file of the Court of the District Judge at Bhopal, in this behalf, was withdrawn to this Court for purposes of disposal in terms of the settlement arrived at between Union of India and the Union Carbide Corporation ['UCC' for short].

2. We have heard Sri V.R. Reddy, learned Additional Solicitor General, in support of these applications, and Sri F.S. Nariman, learned senior counsel, for the UCC. We have also had the benefit of the views expressed by Rt. Hon. Sir Ian Percival, the sole trustee of the Bhopal Gas Hospital Trust, who was present in Court. Sri Shanti Bhushun, learned senior counsel, who appeared for the victims' organisation of Bhopal, supported the view put forward by Sri Nariman and Rt. Hon. Sir Ian Percival.

3. The particular directions in the review order, in the context and implementation of which these applications are made, at paras 203, 204 and 214(e) are in terms following:

203. x x x We are of the view that for at least a period of eight years from now the population of Bhopal exposed to the hazards of MIC toxicity should have provision for medical surveillance by periodic medical check-up for gas related affliction. This shall have to be ensured by setting up long term medical facilities in the form of a permanent specialised medical and research establishment with the best of expertise. An appropriate action-plan should be drawn up. It will be proper that expert medical facility in the form of the establishment of a full-fledged hospital of at least 500 bed strength with the best of equipment for treatment of MIC related affliction should be provided for medical surveillance and for expert medical treatment. The State of Madhya Pradesh shall provide suitable land free of cost. The allocation of the land shall be made within two months and the hospital shall be constructed, equipped and made functional within 18 months. It shall be equipped as a Specialist Hospital for treatment and research of MIC related afflictions and for medical surveillance of the exposed population.

204. We hold that the capital outlays on the hospital and its operational expenses for providing free treatment and services to the victims should, both on humanitarian considerations and in fulfillment of the offer made before the Bhopal Court, be borne by the UCC and UCIL, We are conscious that it is not part of the function of this Court to reshape the settlement or restructure its terms. This aspect of the further liability is also not a matter on which the UCC and the UCIL had an opportunity to express their views. However, from the tenor of the written submissions made before the District Court at Bhopal in response to the proposal of the Court for "reconciliatory substantial interim relief" to the gas victims, both the UCC and UCIL had offered to fund and provide a hospital

for the gas victims. The UCC had recalled that in January, 1986, it had offered "to fund the construction of hospital for the treatment of gas victims the amount being contributed by the UCC and the UCIL in equal proportions". Shri Nariman had also referred to this offer during the submissions in the context of the bona fides of the UCC in that behalf. It is, no doubt, true that the offer was made in a different context and before an overall settlement. But that should not detract the UCC and the UCIL from fulfilling these obligations as, indeed, the moral sensibilities to the immense need for relief in all forms and ways should make both the UCC and UCIL forthcoming in this behalf. Such a hospital should be fully equipped hospital with provision for maintenance for a period of eight years which in our estimate might together involve the financial outlay of around Rs. 50 crores. We hope and trust that UCC and UCIL will not be found wanting in this behalf.

214. We might now sum up the conclusions reached, the findings recorded and directions issued....

(e) On humanitarian considerations and in fulfilment of the offer made earlier, the UCC and UCIL should agree to bear the financial burden for the establishment and equipment of a hospital, and its operational expenses for period of eight years.

4. The Union Carbide Corporation, it is stated, has accepted this suggestion from the Court and set up a Trust for the effectuation of its "obligations" in bringing into being the Hospital for the benefit of the public of Bhopal generally and, in particular, the victims of the gas leak as indicated in the review order. The Rt. Hon. Sir Ian Percival Q.C. is the sole trustee of the Bhopal Gas Hospital Trust established by a deed dated 20th March, 1902. On the same day, certain securities in the form of 1,65,84,750 equity shares of Union Carbide (India) Ltd. [UCIL] of the face value of Rs. 10/- each, representing the shareholding of the UCC in the UCIL were pledged with the Trustee and the relevant share-scrips delivered in the United Kingdom for securing funds to the extent of Rs. 51 crores to be endowed to the Trust for purposes of effectuation of its object, namely, the establishment of the Hospital.

5. It now transpires - and that is what is said to come in the way of the Trust fulfilling its obligations - that in certain criminal proceedings in R.T. 2792 of 1987 initiated against the UCC in the Court of Judicial Magistrate at Bhopal, a proclamation was issued for the appearance of the accused and that in default of such appearance, an order of attachment of the shareholding of UCC in the UCIL along with certain other assets and properties of the UCC along with certain other assets and properties of the UCC was passed. The position that emerges is that until the dispute as to the validity of the attachment in certain proceedings now pending in the High Court in which the validity of the attachment is questioned, the funds endowed to the Hospital Trust, cannot be utilised.

6. What is implicit in the present applications by which the Union of India seeks directions to the UCC for implementation of the direction for the establishment of the Hospital, is that the UCC has to find resources for the hospital independently of the endowed shares. The case of the Union of India is that though the actual settlement in favour of the Trust purported to be prior in point of time to the actual attachment, the settlement was an attempt to screen away the assets from an defeat the then impending attachment.

7. The suggestion made by the sole-trustee was that the funds, to secure which the pledge of the securities had come to be made, were avowedly for the humanitarian cause indicated by this Court when it directed the UCC to put up a hospital for the benefit of the victims and that the procedural wrangles as to the priorities whether the rights of the Trustee under the prior transfer should prevail or whether the purported attachment should prevail, are to nobody's advantage. The only cause, according to the Trustee, that will ultimately suffer, is that of the victims of the Bhopal gas leak. The Trustee suggested that the attachment effected by the criminal court be lifted so that the objective which was to build a hospital for the benefit of the victims is achieved. It was suggested that the pledged securities said to be of the current market value of approximately Rs. 120 crores be sold to best advantage in the international market and that out of the proceeds of sale, a sum of Rs. 51 crores set apart for the purposes of the Hospital and the balance may continue to remain under attachment, to be disposed of, appropriated or applied in accordance with rights of parties recognised and established in the pending litigation concerning the validity of the attachment. This, the Trustee submitted, was the only sensible and pragmatic way out of the present impasse, and would go a long way in reaching medical help to the victims.

8. As this result could be achieved with the consent of the Government we asked the learned Additional Solicitor General whether the litigation at least insofar as the sum of Rs. 51 crores is concerned, would be justified. Learned Additional Solicitor General agreed that some solution which would enable the release of the funds for the benefit of the victims, is eminently desirable, but hastened to add that this should be a consensual decision between the Trustee of the Bhopal Gas Hospital Trust and the Union of India.

Learned Additional Solicitor General also stated that the amount of Rs. 50 crores indicated in the order was a broad estimate and that the "obligations" of the UCC to fund the hospital would not be exhausted with the provision of Rs. 50 crores alone. This, of course, is a different matter which should not detain us at the present stage.

9. On a consideration of the matter, we are left with the impression that the suggestion made by the Trustee is eminently reasonable, worthy of consideration and can form the basis on which the matter could be resolved.

However, we wanted to ensure - in the event this Court intercedes to resolve the matter on these lines - that the procedure for the sale of the securities and the apportionment of the proceeds of sale would remain within the jurisdiction of the Court, and that while the funds earmarked for the Hospital Trust are applied for the said purpose, the balance of the proceeds would be available in India subject to attachment till the dispute as to the validity of the attachment was finally resolved. The procedural arrangement, must also ensure the best price for the securities in the market, and should be done by the Reserve Bank of India or any other nationalised bank in India as escrow agent for the Trustee.

All this, no doubt, pre-supposes a decision which would lift the bar of the, attachment. From the submissions before us, we find a reasonable prospect of the matter being resolved on the lines suggested by the Trustee which we consider eminently reasonable, subject, of course, to such

objections as the Union of India may place before as in this behalf after consideration of the proposal.

10. At the request of the parties, we adjourn the matter to 11th February, 1994. In the meanwhile, we direct both the parties to meet and discuss the modalities for implementation of the suggestions.