

Supreme Court of India

Union Carbide Corporation Ltd. vs Union Of India (Uoi) on 14 February, 1994

Equivalent citations: 1994 (4) SCALE 973, 1995 Supp (4) SCC 59

Bench: M Venkatachaliah, S Mohan

ORDER

1. This order is made in furtherance of the one dated December 10, 1993, of this Court in relation to the implementation of the directions contained in the order dated 3rd October, 1991 in Review Petition No. 229 of 1989 (Union Carbide Corporation v. Union of India) for the setting-up of a hospital for the victims of the Bhopal gas leak disaster. The said order dated 10th December, 1993, be read as part of and prefatory to this order.

2. We have heard Sri V.R. Reddy, learned Additional Solicitor-General for the Union of India. We have had the benefit of the submissions of Sir Ian Percival, the Sole-Trustee of the "Bhopal Gas Hospital Trust" set up by the Union Carbide Corporation (U.C.C. for short) said to be pursuant to and in implementation of the directions in this behalf contained in the said review order of the 3rd October, 1991. We asked Mrs. A.K. Verma, learned Counsel for U.C.C. whether she has any submissions to make. Mrs. Verma stated that she has had no instructions for any specific submissions.

3. It would appear that after we made the order dated 10th December, 1993, there were confabulations between the Government of India on the one hand and Sir Ian Percival, the Sole-Trustee, on the other. The views of the Government of India in relation to the matter are contained in the affidavit filed by Sri R. Gopalan, Director, Department of Chemicals and Petro-chemicals, Government of India. The affidavit of Sri R. Gopalan, inter alia, states:

Accordingly discussions were held by a Committee of Officers of Union of India with Sir Percival on the 27th and 31st January, 1994.

In this regard it is relevant to state that according to the Hospital Services Consultancy Corporation Limited, who have now updated the cost of constructing an appropriate hospital, a down payment of Rs. 110 crores will be necessary to construct a hospital with 500 beds. A down payment of Rs. 60 crores would suffice to construct a hospital with only 200 beds.

After discussing the modalities with Sir Ian Percival, Government is willing to accept the following arrangement for the construction of the hospital, if the Supreme Court orders lifting of the attachment of shares by the CJM at Bhopal:

(a) The amount of money for the hospital (Rs. 50 crores as initially offered by the UCC to be enhanced to Rs. 60 crores as offered by the Trustee, Sir Percival) should be made available to the organisation that would be constituted by the Government for supervising the construction and operation of the hospital. The arrangement suggested by the Trustee that the said money be kept in a hospital trust to be administered solely by him and amount to be released by him in instalments to the construction agency is not acceptable. The Government, however, has no objection to Sir

Percival being associated as a member of a supervisory body which the Government would set up to supervise the construction and operation of the hospital.

(b) The size of the hospital would be determined by the amount of Rs. 50-60 crores or such higher amount as the Supreme Court may persuade M/s. Union Carbide Corporation or the Trustee to make available for the hospital.

(c) The amount for the administrative expenses of the Trust may be left to be decided by the Supreme Court.

(d) The remaining amount after payment of the capital gains tax should be kept under attachment in an escrow account to be kept under the control of CJM Bhopal pending finalisation of the proceedings relating to attachment.

(e) The entire lot of shares should be handed over to the State Bank of India who will get the sale carried out with the objective of realising best price and for this purpose, they may consult merchant bankers, including those of the Union Carbide Corporation.

(f) It is presumed that the sale of shares would fetch an amount sufficient to meet the purpose of construction and operation of the hospital. In case the sale proceeds of shares is not sufficient, capital gains tax and cost of sale have to be first paid out of the sale proceeds. A sum, as ordered by the Supreme Court, would be placed in an escrow account, which will remain under attachment till the attachment proceedings are disposed of. If the remaining amount falls short of Rs. 60 crores, the balance would have to be provided by the UCC/UCIL. In that event funds required for the administration of the Trust would have to be made available by the UCC/UCIL separately.

There is, thus, a broad consensus on the question between the Government of India and the Sole-Trustee of the "Bhopal Gas Hospital Trust."

4. Upon hearing learned Additional Solicitor-General and Sir Ian Percival, we consider it appropriate, in the larger interests of victims of the Bhopal gas leak disaster, to issue the following directions for the effectuation of the directions contained in the review order dated 3rd October, 1991 for the construction of a Hospital at Bhopal:

(a) That the attachment dated 30th April, 1992 ordered by the Court of the Chief Judicial Magistrate, Bhopal, in criminal case No. RT 2792 of 1987 effected against 1, 65, 84,750 shares in and of the Union Carbide India Limited originally held by the Union Carbide Corporation and now endowed upon trust to the "Bhopal Gas Hospital Trust" shall hereby stand modified so as to permit and enable the doing and carrying out of all acts, deeds and things hereinafter provided for in this order and all such things necessary for, incidental to or consistent with the effectuation of the terms of this order. All such acts, deeds and things done pursuant to the directions contained in and under the authority of this order shall not constitute violation of the order of attachment dated 30.4.1992 made by the Court of the Chief Judicial Magistrate, Bhopal in the said Criminal case No. RT 2792/1987.

The said order dated 30.4.92 of the Chief Judicial Magistrate, Bhopal is accordingly modified. The said proceedings are withdrawn to this Court for the said limited purpose. All other proceedings in the said criminal case before the Chief Judicial Magistrate may, however, be proceeded with according to law.

(b) Sir Percival, Sole-Trustee of the "Bhopal Gas Hospital Trust" shall deliver and entrust to the Credit Capital Corporation Ltd. which is stated to have done some ground work in this behalf and the State Bank of India, Bombay, as joint escrow-agents the share-holdings comprising of 1,65,84,750 shares of the Union Carbide India Limited, originally held by the U.C.C. and now endowed to the said "Bhopal Gas Hospital Trust" for purposes of sale in the international share market. The said securities may be sold either in one block or if sales in smaller-lots is more advantageous, in such smaller-lots to the best advantage of the seller as to price.

The said Credit Capital Corporation Ltd. and the State Bank of India as joint escrow-agents shall between themselves decide upon the procedure and modalities of holding dealing with the said securities for purposes of such sale.

(c) The said joint escrow-agents shall between them agree upon the sale price. The sale of the securities shall also be subject to the approval of the price to be signified in writing both by the Government of India, acting through the Secretary, Finance Department, as well as Sir Ian Percival, the Sole-Trustee of the "Bhopal Gas Hospital Trust". In the event of disagreements in this behalf between the Government of India and the Sole-Trustee which cannot be resolved by mutual discussion, the parties shall be at liberty to move the Court for appropriate directions.

(d) The proceeds of the sale of the said securities shall be held by the State Bank of India as escrow-agent subject to the performance and fulfilment of the obligations and duties indicated in this order.

(e) Out of the said proceeds of sale after deducting the reasonable expenses incurred for the sale such as commission, stamp-duty and other incidentals, a sum of Rs. 46.2 crores along with Rs. 7.5 crores to be contributed by the Union Carbide India Ltd. for purposes of the Hospital Project and the unlashd dividends accrued on the aforesaid securities amounting to Rs. 11.3 crores, in all amounting to Rs. 65 crores, shall be held in a separate and distinct account with the State Bank India in the name of Sir Ian Percival, Sole-Trustee of the "Bhopal Gas Hospital Trust", in his capacity as such trustee, to be utilised exclusively for the benefit of the beneficiary, namely, the Bhopal Gas Hospital to be constructed at Bhopal in the service and for the benefit of the victims of the Bhopal gas leak disaster and for the objects and purposes indicated in the Bhopal Gas Hospital Trust. No part of the fund in the said account shall be permitted to be diverted to any purpose other than the purposes of the said Bhopal Gas Hospital at Bhopal.

(f) Out of the balance of the sale-price, capital-gains tax, as may become assessable upon the capital-gains arising out of sale of the aforesaid securities, be paid by the State Bank of India to the Revenue upon instructions in this behalf by the said Sole Trustee or by such other person or persons as the Sole-Trustee may authorise in this behalf.

(g) The remainder of the sale proceeds shall be held in yet another account in the name of Sir Percival, the Sole-Trustee of the "Bhopal Gas Hospital Trust" in his capacity as such Trustee with the State Bank of India. That account shall remain frozen and shall be deemed to be under attachment by the Court of the Chief Judicial Magistrate, Bhopal in the said criminal case R.T. No. 2792 of 1987. The State Bank of India shall not permit any withdrawals in the said account except to the extent to be permitted by the Judicial orders as may finally be made on the claims preferred against the attachment by the U.C.C. or the Sole Trustee of the Bhopal Gas Hospital Trust, as the case be. The State Bank of India shall, however, credit the periodic interest accruing in this account to the said account. The interest shall also remain under attachment. The parties shall be at liberty to move this Court for such orders or directions as they may consider necessary, from time to time, in regard to the continuance and operation of this account as well as the scope and effect of the attachment.

(h) In respect of the Hospital Project, the Government of India shall constitute an appropriate Committee to take steps for the planning, construction, equipping and commissioning of the hospital. Sir Ian Percival, the Sole Trustee may be invited to be a Co-Chairman of this Committee.

(i) Sir Ian Percival, the Sole Trustee of the Bhopal Gas Hospital Trust, in discharge of his obligations as such trustee and in execution of the Trust, shall release such sums for the Hospital Project which the Hospital Committee, to be set-up by the Government of India, might indicate, from time to time. The said Sole Trustee shall be entitled to satisfy himself as to the conformity of the expenditure with the objects and purposes of the Trust of which he is the Sole-Trustee.

(j) That the Government of India shall permit Rs. 5 crores out of the sale proceeds to be transmitted to the account of the Sole Trustee, Bhopal Hospital Trust, to be held in England in Pound Sterling to meet the expenses of the administration of the Trust.

5. Sir Ian Percival, the Sole Trustee, indicated in the course of his submissions other desirability of the Government of India making an appropriate reciprocal gesture by augmenting the funds for the Hospital Project by grant of sums equivalent to the capital-gains so that the idea of a full-fledged hospital could be realised.

Sri V.R. Reddy, learned Additional Solicitor General appearing for the Union of India, stated that this would be a matter for an appropriate decision by the Government of India and the Government will take such a decision after bestowing an appropriate and sympathetic consideration of this suggestion.

6. We wish to add that the need for a specialised Hospital was made as long back as in October, 1991 and though three years have since elapsed it is only now that some indications for its beginning are visible. This is in a measure owing to the constructive stand taken by Sir Ian Percival, the Sole Trustee of the "Bhopal Gas Hospital Trust" and his untiring efforts in expediting the modalities in this behalf. While we appreciate these efforts, we do hope that the joint efforts of the Sole Trustee and the Government of India will ensure a hospital for the victims of the Bhopal gas leak disaster very early. We indicate that, at all events, the project, shall be completed within a period of three years from today.

7. The parties shall be at liberty to move this Court for further directions in working out the terms of this order.

8. Interlocutory Application Nos. 24 and 25 are disposed of accordingly.