

UNION CARBIDE CORPORATION ETC. ETC.

v.

UNION OF INDIA ETC. ETC.

OCTOBER 3, 1991

[RANGANATH MISRA, CJ., K.N. SINGH, M.N.
VENKATACHALIAH, A.M. AHMADI AND N.D. OJHA, JJ.]

Bhopal Gas Disaster—Court assisted settlement arrived at between Union Carbide Corporation and Union of India—5 Million U.S. Dollars deposited by Union Carbide Corporation prior to settlement and lying unutilised with Indian Red Cross Society—Whether the said award of 5 Million Dollars made as an interim measure would stand independently and outside the final adjudication.

In the suit filed by the Union of India against Union Carbide Corporation (UCC) filed before the Southern District Court at New York, the presiding Judge directed the utilisation of 5 Million Dollars deposited by UCC towards Interim Relief Fund, for affording relief to the victims of the Bhopal Gas leak disaster through the Indian Red Cross Society. The said payment was intended to be without prejudice to the contentions of UCC. Also it was to be credited against the payment of any final judgment or settlement of the claims against UCC arising out of the Bhopal Gas leak disaster. The Indian Red Cross Society sought to stipulate with the American Red Cross that the Indian Red Cross Society should be free from any contingent obligations stemming from the final result of the litigation one way or the other. However, the terms of the order were not changed.

After the proceedings in the U.S. District Court terminated upon UCC's plea of *forum non-conveniens* being upheld, Union of India instituted a suit in the District Court at Bhopal. The claim in the suit came to be settled in this Court by its orders dated 14/15th February, 1989. In terms of the settlement order, the said sum of 5 Million US Dollars was treated as part of the settlement Fund and a direction was given to the Registrar to have the amount transferred to his credit which was lying unutilised with the Indian Red Cross Society.

The Indian Red Cross Society has filed the present applications. It contended that the order dated 15th February, 1989 insofar as it treated the unutilised part of the interim relief fund and authorising the Registrar to realise it as such, was not consistent with the terms under which the relief fund was agreed to be entrusted to and accepted by it and

A so the directions given in regard to the said relief fund required to be deleted.

On the question whether the interim relief of 5 Million U.S. Dollars was a distant award standing independently and outside the final adjudication, dismissing the applications, this Court,

B **HELD:** 1. The agreement between the American Red Cross and the Indian Red Cross Society came to be discussed before the District Court, New York, during the hearing on 20th November 1985. The portions of the transcript of what transpired at the hearing indicate that far from approving the purported arrangement inter-se between the American Red Cross and the Indian Red Cross Society, they show that the terms of the order dated June 7, 1985, as to the nature and character of the interim relief as an "advance payment" or "credit to the defence" were left undisturbed. The transcript of the hearing also reaffirms that "if there is any recovery against Union Carbide, it is a set-off". Also there is nothing on record to show that the terms as to the nature and character of the interim payment had been altered in terms of the inter-se arrangements pleaded by the Indian Red Cross Society. In the circumstances, the agreement between the American Red Cross and the Indian Red Cross Society cannot prevail over the effect of the order dated 7th June, 1985 of Judge Keenan. This Court's directions in this behalf in the order dated 15th February, 1989, are not inconsistent therewith and do not, therefore, require any modification. [386 B-F]

E 2. Now that the terms of the settlement have been upheld in the review proceedings the unutilised part of the interim relief of 5 Million U.S. Dollars will become part of the Bhopal gas relief fund and shall have to be administered as such. The Registrar of the Supreme Court shall be entitled to call-up the funds with the Indian Red Cross Society which stood unutilised as on 15th February, 1989. [386 F-G]

F **CIVIL APPELLATE JURISDICTION :** Interim Application Nos.1, 2 and 3 of 1989.

IN

Civil Appeal Nos. 3187 and 3188 of 1988.

G From the Judgment and Order dated 4.4.1988 of the Madhya Pradesh High Court in Civil Revision No. 26 of 1988.

Soli J. Sorabjee, Attorney General, P.P. Rao, Rajinder Sachher, D.K. Kapur, Mrs. Indu Goswamy, Raju Ramachandran, Mukul Mudgal, S.R. Bhat, M.S. Ganesh, V.B. Mishra, A.M. Khanwilkar, Ms. Madhu Khatri, P. Parameswaran, Ms. A. Subhashini and C.S. Vaidyanathan for the appearing parties.

H

The following Order of the Court was delivered:

By these applications the Indian Red Cross Society seeks a modification of certain directions issued by this court on 15th February, 1989, in Civil Appeals Nos. 3187 and 3188 of 1988 pursuant to the settlement of the suit instituted by the Union of India against Union Carbide Corporation and the Union Carbide Corporation (India) Limited arising out of the Bhopal Gas leak disaster.

2. The prayer of the Indian Red Cross Society in these applications arises in the context of the order dated 7th June, 1985, made by John F. Keenan, Presiding Judge of the Southern District Court at New York (U.S.) directing the utilisation of 5 Million dollars for relief to the victims of the gas leak disaster through Indian Red Cross Society. In the said order Judge Keenan referred to the willingness of the Union Carbide Corporation "to pay 5 million dollars to aid the victims of the gas plant disaster which occurred in December, 1984 in Bhopal, India" and had desired and indicated that in the administration of this fund, which was intended to be at the disposal of the Union of India, should be subject to certain reporting-requirements as to the utilisation of the funds. Union of India did not agree to subject itself to those conditions. Referring to the alternative arrangements as to the administration of the interim relief necessitated by Union of India's disinclination to take up relief operation on the terms stipulated by the Court, Judge Keenan observed:

"Counsel for the Union of India has informed the Court that the Union of India considers these reporting requirements so onerous as to compel the Union of India to decline the five million dollars in interim relief offered. Accordingly, the Court directs that Liaison Counsel and Messrs Bailey and Chesley of the Executive Committee contact the American Red Cross Society to arrange for discussions with the Indian Red Cross Society, in order to formulate a plan for distribution of the five million dollars to the victims of the gas plant disaster."

3. The US District Court, therefore, proposed a scheme for the utilisation of the Interim Relief Fund through the agency of the American Red Cross Society. But what is of particular significance in the present context is as to how this interim relief fund was to be treated and accounted for at the end of the day when the litigation culminated in a final decision. That the payment was intended to be without prejudice to the contentions of the Union Carbide Corporation and that, further, the amount of interim relief would form part of the quantum that may finally be adjudicated was rendered explicit in the last paragraph of the said order dated 7th June, 1985 which stipulated:

A "Neither the promulgation, implementation nor anything contained herein shall be asserted or used in any manner against the interests of Union Carbide Corporation. This provision of interim relief by Union Carbide Corporation shall be credited against the payment of any final judgment or settlement of the claims against Union Carbide Corporation arising out of the Bhopal gas leak of December, 1984."

B After the proceedings in the US District Court terminated upon the Union Carbide Corporation's plea of *forum non-conveniens* being upheld, Union of India instituted suit No. 1113 of 1986 in the District Court at Bhopal. The claim in the suit came to be settled in this court in the said Civil Appeal Nos. 3187, 3188 of 1988 by the orders dated 14th/15th February, 1989.

C 4. In terms of the said settlement the sum of 5 million US dollars was treated as part of the settlement fund. In the order of this Court dated 15th February, 1989 this sum of 5 million US dollars was specifically referred to in clause (a) of paragraph 2 and paragraph 5. The relevant portions of the order are excerpted below:

D "(a) a sum of US 425 million (Four Hundred and Twenty five millions) shall be paid on or before 23rd March, 1989, by Union Carbide Corporation to the Union of India, less US \$ 5 million already paid by the Union Carbide Corporation pursuant to the order dated 7th June, 1985 of the Judge Keenan in the court proceedings taken in the United States of America."

E 5. The amounts payable to the Union of India under these orders of the Court shall be deposited to the credit of the Registrar of this Court in a bank under directions to be taken from this Court.

F *This order will be sufficient authority for the Registrar of the Supreme Court to have the amount transferred to his credit which is lying unutilised with the Indian Red Cross Society pursuant to the directions from the International Red Cross Society."*

[Emphasis supplied]

G The case of the applicant—Indian Red Cross Society—is that in the course of the negotiations the American Red Cross had with it in the matter of administration of this relief, the Red Cross Society of India had made it clear to the American Red Cross that it would not undertake the relief administration unless the fund was assigned to it unconditionally. Red Cross Society of India would say that it was on this specific understanding that it accepted the engagement to administer the funds in India.

H

Accordingly, the Indian Red Cross Society contends that the order dated 15th February, 1989 in so far it treats the unutilised part of the interim relief fund as part of the settlement fund and authorises the Registrar of the Supreme Court to realise it as such is not consistent with the terms under which the relief fund was agreed to be entrusted to and accepted by the Indian Red Cross Society and that, therefore, those directions in the order dated 15th February, 1989 require to be deleted.

5. We have heard Dr. Chitale for the Indian Red Cross Society, Shri F.S. Nariman for the Union Carbide Corporation and the learned Attorney General for the Union of India.

In view of the circumstance that at the time these applications were heard, the validity of the settlement stood assailed in certain proceedings of Review, the Union of India abstained from making any statement as to the merits of the claim of the Indian Red Cross Society. Union of India sought to steer clear of any possible implication of any appropriation of the settlement fund which might be susceptible of an inference of rectification by it of the settlement.

The Union Carbide Corporation while disputing the claim of the Indian Red Cross Society that the said 5 million US dollars constituted subject matter of a separate and distinct fund outside the scope of the litigation culminating in the orders of 14/15th February, 1989, however, stated that it had no objection if the Union of India was agreeable to the Indian Red Cross Society retaining and utilising the money lying with it.

6. The grantability of the prayer of the Indian Red Cross Society really turns upon whether the interim relief of 5 million US dollars was a distinct award standing independently and outside of the final adjudication. It is manifestly not so. Judge Keenan's order dated 7.6.1985 makes that clear. It, however, appears true that the Indian Red Cross Society sought to stipulate with its American counterpart that the Indian Red Cross Society be free from any contingent obligations stemming from the final result of the litigation one way or the other. Indeed, at some point of time the American Red Cross, presumably at the instance of the Indian Red Cross Society, desired to have the matter submitted for further consideration of the District Court at New York.

But nothing has been placed before us to indicate that the District Court for the Southern District, New York, ever changed the terms of its order dated 7th June, 1985. On the contrary, the affidavit dated 20th November, 1989, of Mr. John Macdonald filed on behalf of the Union Carbide Corporation indicates that from the very inception this interim

A relief fund was intended to be in the nature of an "advance payment" or "credit to the defence". The following observations of Judge Keenan on 16th April, 1985 as to the intended nature of the proposed interim relief place the matter beyond doubt. Judge Keenan observed:

B "It seems to me that some sort of emergency systematic relief should be supplied to the survivors on a prompt basis. Any such funding supplied by the defendant would be treated in the nature of an advance payment or credit to the defence."

C 7. It would appear that the agreement between the American Red Cross and the Indian Red Cross Society came to be discussed before the District Court, New York, during hearing on 20th November, 1985. The portions of the transcript of what transpired at the hearing furnished in Mr. John Macdonald's affidavit indicate that, far from approving the purported arrangement inter-se between the American Red Cross and the Indian Red Cross Society, they show that the terms of the order dated June 7, 1985, as to the nature and character of the interim relief as an "advance payment" or "credit to the defence" were left undisturbed. The transcript of the hearing furnished in the affidavit of Mr. John also reaffirms that "if there is any recovery against Union Carbide, it is a set-off".

E 8. This is not disputed nor any independent material placed before us to show that the terms as to the nature and character of the interim payment had been altered in terms of the inter-se arrangements pleaded by the Indian Red Cross Society. In the circumstances, the agreement between the American Red Cross and Indian Red Cross Society cannot prevail over the effect of the order dated 7th June, 1985 of Judge Keenan. This Court's directions in this behalf in the order dated 15th February, 1989, are not inconsistent therewith and do not, therefore, require any modification.

F 9. Now that the terms of the settlement have been upheld in the review proceedings the unutilised part of the interim relief of 5 million US dollars will become part of the Bhopal gas relief fund, and shall have to be administered as such. The Registrar of the Supreme Court shall be entitled to call-up the funds with the Indian Red Cross Society which stood unutilised as on 15th February, 1989.

G 10. The present applications of the Indian Red Cross Society are, accordingly, dismissed.

G.N.

Applications dismissed.