

COURT OF DISTRICT JUDGE, BHOPAL

REGULAR SUIT NO. 1113 OF 1986

UNION OF INDIA

(Plaintiff)

Versus

UNION CARBIDE CORPORATION

(Respondent)

SUBMISSION ON BEHALF OF THE DEFENDANT IN CONNECTION WITH THE COURT'S PROPOSAL DATED 2ND APRIL, 1987, REGARDING "SUBSTANTIAL RECONCILIATORY INTERIM RELIEF", WHICH ACCORDING TO THE COURT'S ORDER DATED 27TH NOVEMBER, 1987, IS TO BE ADJUDICATED UPON & HEARD ON 7TH DECEMBER, 1987.

1. On 2nd April 1987, this Hon'ble Court, put forth on its own to both parties to the suit "a proposal for reconciliatory, substantial interim relief to the gas victims...". In response to the Court's proposal, (and without treating it as a direction since the Court had no power or jurisdiction to so direct) submission was filed on behalf of the defendant (expressly without prejudice to its legal rights and contentions) in which inter alia the defendant enumerated the various aspects of humanitarian rehabilitation relief which it had repeatedly offered and made a further substantive offer on humanitarian grounds. The plaintiff in its reply to the submissions filed on behalf of the defendant stated that it would welcome an overall settlement of all claims even at this stage provided it was a fair and just settlement.

2(a) Thereafter this Hon'ble Court on 14th September, 1987, recognized that in response to the court's proposal both parties had indicated that they were willing for a just and overall settlement. "That is a good sign", said the court in its order dated 14th September, 1987. Serious without prejudice negotiations were in progress between the parties and the Court was informed on 30 October, 1987, that they were making serious efforts and the Court appreciated and recorded its impression that the bona fides from both sides appeared to be plain and that a fair settlement would be the best solution.

2(b) Further on 18th November, 1987, this Hon'ble Court recorded that:

Now that it is reported that no settlement has taken place so far the Court deems it fit to set down the case for hearing. The pending petitions deserve to be decided in a time-bound manner. The parties shall appear on 27th November, 1987, for drawing up a schedule for hearing all the remaining pending petitions so that the case can proceed in an expeditious manner.

2(c) It was only on 27th November, 1987, that this hon'ble court directed that its own "proposal" (which was not a petition filed in Court or numbered as such and was not intended to be adjudicated upon) was to be heard the following week. The Court recorded :

On 7th December, 1987, the Court shall hear the issue of grant of interim relief coming from the Court suo motu.

3(a) At the outset, it is submitted that there is "no issue for grant of interim relief" as assumed by this hon'ble court by its order dated 27th November, 1987.

3(b) This further submission is made in support of the contentions of UCC that apart from the Court having no power or jurisdiction to direct any interim relief as outlined in its suo motu proposal dated 2nd April, 1987, it would be contrary to law and fair play and contrary to admitted facts to order any interim relief whatsoever.

4. It is significant that the original "proposal" of this Court was addressed to both parties whereas after the direction dated 27th Nov. 1987, it is sought to be converted into the court's prima facie view that the defendant ought to be mulcted in a sum of money not only before the trial of the suit but well before even discovery has been ordered. It is submitted that any order passed on the proposal would be a total nullification of the original intent of the proposal. In any case to compel the defendant to pay over moneys or deposit moneys in Court for the benefit of needy gas victims who are neither identified nor particularised before the commencement of the trial is not only contrary to all principles of law but is also a denial of the right to defend the suit on merits which was the basis on which the forum non-conveniens motion was finally determined in the United States.

5. The normal procedure in a civil suit as laid down in the Code of Civil Procedure is adversarial. The present suit is equally governed by the Code of Civil Procedure and is not to be tried in any other manner. The hallmark of the system of administering justice is that the Judge decides the case after both sides have been given a full opportunity of presenting their respective cases and the trial is conducted in a fair and impartial manner and there is no prejudgement.

It is, therefore, absolutely essential that no issue or controversy is pre-judged and there is no expression of opinion made at any preliminary stage which creates an impression in the mind of a litigant that the Judge has made up his mind against him. Further, the judgment must follow discovery, the raising of issues, the leading of evidence, including cross examination and the arguments of both sides. Judgment fastening pecuniary liability in ordering a party to make payment on the basis such liability cannot precede the main stages mentioned above in the trial of a civil suit. No litigant's property or business can be visited with payment or threat of recovery before a full and fair trial resulting from an adjudication on merits. No defendant can be presumed to be liable to pay any amount the after trial and a judicial determination according to law.

It is respectfully submitted that there is no provision in law whereby a Judge can (before issues are raised, evidence led or defences are considered) suo motu take up the adjudication, any application or question which results in directing

payment by a defendant, who disputes liability and whose defence may succeed after trial so as to non-suit the plaintiff. It is submitted that the Union of India (the sole and exclusive plaintiff representing the gas victims) has made an application for any decree or order for payment against the defendant UCC as there is no warrant in law or in fact for the same. Apart from such an application being clearly not maintainable, the UOI as plaintiff, has not produced any material to support any such order.

6. It is respectfully submitted that any adverse order against the defendant UCC on the question raised suo motu by the Court would expose the Court to the criticism that it has pre-judged the issue before the trial and evidence, and would lead an extremely prejudicial and unfair inference that the defendant is assumed to be liable before a trial. It is submitted that the Court in that event would drop the mantle of the Judge and will assume the role of an advocate which is impermissible. It respectfully submitted no case justifies penalising defendant before a fair trial and adjudication. Deciding interim reconciliatory relief in spite of opposition of the defendant and after its defence has been on record for the past one year, would not only be contrary to law and justice but would also be a total denial of natural justice and fair play.

(a) The learned Judge has now sought to convert its proposal to a live issue for determination and adjudication. It is respectfully submitted that the Court should not take upon itself such a burden because if it does the defendant is deprived of the opportunity of obtaining material which it would be entitled to if an application for interim relief were made by the plaintiff—quite apart from the fact that such an application would not be maintainable. In fact the plaintiff never made any application for interim relief neither in the proceedings in the USA nor in this Hon'ble Court, fully acknowledging the settled legal position that no such application could be made. Such an application would tantamount to compelling payment of money from a defendant notwithstanding that its alleged liability is hotly disputed and contested as detailed in the written statement and counter claim of the defendants.

(b) By acting suo motu, this Hon'ble Court has denied to itself the most relevant material which, if the defendant had applied for the same, the plaintiff would have been bound to supply viz. the names and status of the gas victims in need of immediate ameliorative relief. In connection with the above, the defendant will refer to the order of the Supreme Court of India in writ Petition (Civil) No. 11708 of 1985 (*Dr. Nishit Vohra Vs. State of M.P.*) A copy is annexed.*

(c) An adjudication now after three years on interim relief would be tantamount to a decree before trial which it is submitted cannot and ought not to be done. Besides, the Court lays itself open to the comment that it is directly entering into the arena of conflict in an adversary proceeding—and by so doing covering itself with the dust of such conflict; which it is respectfully submitted this Hon'ble Court should avoid doing.

7. The proposal of the Hon'ble Court dated 2nd April, 1987, was never intended to be a matter to be adjudicated upon but was made as a suggestion to arrive at an accommodation by consensus. It is respectfully submitted that the

* The annexure has been omitted. *Ed.*

assumptions on which the Court's proposal proceeds, namely that urgent substantial interim reconciliatory relief is required, is not to be found from any facts on record. Nor is there any material before the Court to justify passing of any interim order as proposed. As more particularly mentioned herein the factual position is to the contrary. When in para 70 of its written statement and counter claim the defendant set out various interim measures it had proposed on humanitarian grounds the response of the plaintiff in the reply to the written statement and counter claim (see para 128) was that it was 'irrelevant to the present action'.

8. Neither the plaintiff nor the State of M.P. have given any particulars much less full particulars of any victim needing immediate redress. Altogether apart from the question of jurisdiction and power the court has not been placed in any position to help ameliorate person genuinely in need of relief.

9. The stand taken by the Union Government has been that the invitation of claims under the statutory scheme is itself cost adjudicative i.e., after the suit is decreed and not before. This stand, quite apart from being erroneous and expressly contrary to the Act and the scheme is indicative of the stand of the plaintiff and the stand of the Government of Madhya Pradesh that there could be no award of interim payment of money in the present suit until the final determination of the suit. It is on this footing that the Union of India has stated in the plaint that they have disbursed sums of money for providing relief to victims and the Madhya Pradesh Government has done likewise.

10. The following facts and events are also significant and will be relied upon:

(1) In view of the pronouncement of the M.P. Government referred to in the defendant's response to the court's proposal that no cost or effort has been spared in the matter of providing relief to the gas victims and the further advertisement of state government to the same effect appearing in the widely published press report issued on 20th Nov., 1987 (copy annexed*) as well as the statement of the Minister of Industries in Parliament that "the Government have, however, not spared any efforts to provide relief and rehabilitation to the victims", it is clear that according to the authorities who have claimed to sue as *parens patriae* the necessity for any urgent interim relief stands negated.

(2) No application has been made by the Union of India or the State of Madhya Pradesh to the Court for any interim relief either initially or at all—thus it is submitted that the stand of the Union of India and the Government of Madhya Pradesh as thus disclosed affirms the position that neither interim relief can be granted in law nor is there is fact any occasion for the same after a period of three years.

(3) At the hearing of the application for particulars (I.A. No. 12) it was expressly stated on behalf of the Union of India, on an enquiry from the Court, that although the notification appointing the commissioner pursuant to the gazetted scheme (framed under the Parliamentary Act) had been issued appointing Hon'ble Mr. Justice Muley as commissioner, no further notice or notification inviting claims as contemplated by the statutory scheme had in fact been made. It is submitted that ascertainment of any victims needing relief can only be made after the claims have been duly processed by the commissioner under the statutory scheme and

* The annexure has been excluded *Ed.*

Thus there could be no order for interim relief—certainly not any relief in terms of money, which is tantamount to a decree being passed before trial; apart from any order for interim relief being wholly unwarranted under existing Indian Law or Procedure. In fact the Central Minister-in-charge of Industry, Shri Vengal Rao as late as 16th Nov., 1987, has himself categorically stated in Parliament that out of 5,25,000 claim forms received the Government of Madhya Pradesh had only processed 7000 of such claims upto October, 1987 and that the task of completing the work would take four years more. Even the result of this minimal processing has not been disclosed. In fact disclosures of the results of medical examinations of affected victims has been surprisingly prohibited by the government which has expressly directed that any medical information on gas victims should not be revealed. Moreover the state government has itself recognised the position that there are bogus and grossly inflated claims ones (sic)—and has reportedly launched prosecutions to deter filing of false claims. In this situation it is submitted that there could be no direction of the court to order any interim relief as contemplated in the court's proposal.

(4) From the official Publication of the Government of M.P., it will be shown that even the assumption of there being over 5,00,000 bona fide claimants is patently incorrect.

dated : 5th December, 1987.

Advocates for the Defendant