IN THE COURT OF THE DISTRICT JUDGE, BHOPAL

(Presided by Shri M.W. Deo)

GAS CLAIM CASE NO. 1113 OF 1986

UNION OF INDIA

(Plaintiff)

Versus

UNION CARBIDE CORPORATION

(Defendant)

ORDER

1. By order dated 2nd April, 1987, this court made proposal to parties for substantial reconciliatory interim relief. The Union of India and the UCC both responded positively and stated that they would bona fide work out an over-all settlement. Though the UCC added that it was on humanitarian grounds, the positive response obviously was because of some foundation of some indisputable major premises stated in the order dated 2.4.87. Thus one thing is clear that the parties also appear to be anxious about compensation to the gas victims which indeed is the paramount justice in the case.

2. Attempts at an over all settlement appear to have bogged down in the din of diverse loud voices, leaving the poor gas victims pathetically past even the 3rd anniversary of the unprecedented disaster to fight out legal battle of unprecedented dimension and nature.

3. In these circumstances, this court as a result of judicial reaction, thought it fit in the interest of justice and fair play, to hear the parties on the matter of interim relief. I feel fortified to find that somewhat similar judicial reaction appears even in the order of hon'ble high court dated 3rd December, 1987. In the order-sheet of this court dated 18th November, 1987, the word, 'issue' was inadvertantly used. The court meant to hear parties on proposal for grant of interim relief. This proposal came *suo motu* from the court and as such, there was no issue. Yet the court, in recognition on the principle of adversarial system, thought that nothing should be done without affording opportunity to both the parties of being heard and that is how, both the parties were asked to put forth their contentions and they fully expressed themselves on the matter of grant of interim relief.

4. The UCC probably drawing upon, *'John* Vs. *National Coal Board'*: 1957 (3) All England Reports 155 put in a submission to the effect that the court should not drop the mantle of a judge and assume the robe of an advocate and further that it should not descend into the arena and be liable to have its vision clouded with the dust of conflict.

5. For one, Lord Denning made those observations in a wholly different context pertaining to the gross and unjust interference by a judge in examination and cross-examination of witnesses during a trial. Further Lord Denning in the same case but in the context of adversarial system obtaining in England, observed that—

> Even in England, however, a Judge is not a mere umpire to answer the question "How's that"? The object above all is to find out the truth and to do justice according to law...:

And I have borne in mind all these principles together with what Lord Eldon L.C. said:

> "Truth is best discovered by powerful statements on both sides." On these principles, the matter was set down for hearing both parties which were heard fully. They also filed written brief of long oral arguments. The interveners submitted written submission showing good amount of labour put in it. All this has been indeed of great help to the court. There was profusion of precedents at the bar, and I must confess that reference is restricted to avoid repetition and remoteness at this interlocutory stage.

6. Mr. F.S. Nariman, learned counsel for UCC made following points:-

(i) Lack of jurisdiction to this Court to order interim relief;
(ii) Lack of provision and power under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (hereinafter called, 'The Act for the sake of brevity) for grant of interim relief;
(iii) Lack of material on record in the nature of quality and quantity to permit the Court to undertake such a venture;
(iv) The assertion of the State of M.P. and the Union of India in providing interim relief.

7. Considering the question of jurisdiction it must be conceded that jurisdiction for an order of payment of interim relief here is not to be considered in exercise of provisions like Order 39, rule 10 or Order 37, C.P.C.

8. The question is whether the court can exercise jurisdiction under section 151, C.P.C. for grant of interim relief. Learned counsel for UCC submitted that this court cannot draw upon inherent powers under section 151, C.P.C. for ordering payment before final judgment. On the other hand the learned Attorney- General argued that under the provisions of section 94 (e) coupled with section 151, C.P.C. Court has ample powers to make such an order in the interest of justice.

9. Refering to case law, learned counsel for the UCC relied on *'Gopal Saran'* A.I.R. 1924 Pat. 69. It was a suit for enforcement for a contract as contra-distinguished from our case of action in tort and is not apposite.

10. The learned counsel referred to number of cases relating to grant of interim

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*[The Sanskrit quotation has been omitted. *Ed]*

maintenance to point out that the jurisdiction flowed from statutory right of maintenance and not under section 151, C.P.C. (See: *Mohd. Abdul Rehman:* A.I.R. 1953 Mad.420, *Tarini Gupta:* A.I.R. 1968 Cal. 567, *Gorivelli Appanna:* A.I.R. 1972 A.P. 62 and so on). He similarly referred to cases not permitting order to pay interim rent in absence of a statutory provision (See: *Moore:* 1977 (2) All England Reports 842 Felix : 1982 (3) All England Reports 263).

11. The argument, therefore, was that the jurisdiction can flow only from a statutory right of statutory provision. The contention was repelled by the learned Attorney-General by rightly arguing that even before codification in the field of hindu law, interim maintenance could be granted. Even in cases of interlocutory orders provided under section 94 (a), (b), (c), and (d), it does not depend upon existence of a statutory right. The jurisdiction and power are provided by the substantive right in suit to be enforced with aid of section 94 aided by section 151, C.P.C. In *Sri Rajah* (A.I.R. 1941 Madras 55), cited by Shri Nariman, grant of interim payment in a property suit was upheld though the amount was reduced.

12. The case of *Padam Sen;* (A.I.R. 1961 S.C. 218) turned on a different point and a different purpose which is not apposite here. In that case Padam Sen's conviction was challenged on the ground that he was not a 'Public Servant' in as much as his appointment under section 151, C.P.C. as a commissioner to seize account books which was evidence and not subject matter of the suit, was without jurisdiction and could not be covered by Order 39, Rule 7 or Order 38, Rule 5, C.P.C. The case is, therefore, distinguishable on facts. As regards law, it was laid down that inherent powers under section 151 are certainly there but are not powers over substantive rights.

13. The case of *Padam Sen (supra),* was considered in subsequent decision of *Manoharlal;* (A.I.R. 1962' S.C. 527) and it was held that it is well settled that the provisions of the code are not exhaustive, for the simple reason that the legislature is incapable of contemplating all the possible circumstances which may arise in future, and consequently for providing for them. It was further held that the provisions of section 94 of the Code does not have the effect of taking away the right of the court to exercise its inherent powers. section 151 itself says that nothing in the code shall be deemed to limit or otherwise affect the inherent powers of the court to make orders necessary for the ends of justice. The inherent powers have not been conferred upon the courts. It is a power inherent in the court by virtue of its duty to do justice between the parties before it.

Respectfully following the aforesaid law laid down in *Manoharlal,* I may further add that *inherent powers are born with the creation of the Court, like the pulsating life coming with child born into this world. Without inherent powers, the Court would be like a still born child. The powers invested in the Court after its creation are like many other acquisitions of faculties which the child acquires after birth during its life. Thus inherent powers are of primordial nature. They are almost plenary except for the restriction that they shall not be exercised in conflict with any express provision to the contrary.*

In the written submission of interveners Shri Vibhuti Jha, learned counsel, has referred to the weighty observations of Ranganekar J. in support of exercise of jurisdiction *'ex-debito-justitiae'* made in 'A.I.R. 1938 Bombay 199 at page 205, column two.

14. The power under residuary clause (e) of section 94, C.P.C. is again somewhat of the same nature relating to interlocutory stages of the suit. The learned Attorney General very strongly submitted and I am in full agreement with him that section 94(a) need not be interpreted *ejusdem generis* the earlier clauses (a) to (d). This again was, for the same reasons, as stated above, by the Supreme Court vis-a-vis section 151, C.P.C.

15. It is to be seen that in the suits for claims other than those of pecuniary nature it is not uncommon at all to pass an ad-interim interlocutory order of the same nature as the main claim in the suit. As for example, in a suit for permanent injunction relief of interim injunction is granted and in a suit for accounts or for possession of property, a receiver can be appointed and so on. Why should order for interim relief be not permissible in a money claim, simply because it will partake nature of the main claim...money decree? section 94 provides for making interlocutory order as may appear to be just and convenient and there is no provision express or implied prohibiting such an order in a suit for money. *The principle under section 94. C.P.C. is to recognise and grant powers to the court to make an interlocutory order of nature as that of the main claim in the suit.* It is true that such an order has not been shown to have been made formerly in a suit by a civil court.

16. As civilization grows with the scientific development, circumstances come into being which were never contemplated before. Law must also grow to meet the problems raised by such changes in general including the hazards of industrialisation in particular. section 94(e) makes room for such growth of law in the field of ad-interim relief even in money claims.

17. In the field of tort, the theme of interim relief has also to be developed as non-statutory relief because law of tort is essentially non-statutory. It is to be noted that such theme has found statutory recognition under various Acts and recently under section 92-A of the Motor Vehicles Act. Therefore, it seems to me that in a claim for compensation in an action in tort it would be consistent with the law of torts to contemplate jurisdiction to the civil court hearing the suit for grant of interim relief by way of interim compensation albeit in appropriate cases. That being so, it would be difficult to say that there is no substantive right with the gas victims for interim compensation and no jurisdiction to court to consider it.

18. I, therefore, hold that in a tort action the civil court has jurisdiction to grant interim compensation. In fact to repeat, it has been statutorily recognized of late. It has also been judicially recognised and *laid down as law by Supreme Court in M.C. Mehta;* (A.I.R. 1987 S.C. 965) as modified by order dt. 10.3.1987 and reviewed in the judgement of 20th December 1986. Shri Nariman, learned counsel for U.C.C. submitted that this Court has no jurisdiction under article 32 of the Constitution like the Supreme Court. He is right. And I have no such illusion either. But then I am drawing upon *M.C. Mehta (supra)* for the limited principle that in action for tortuous liability grant of interim compensation is permissible.

19. On a perspective of the above, it clearly seems to me that section 94 (e) coupled with section 151, C.P.C. amply provide jurisdiction to the court which can exercise it, if not directly in conflict with any other express provision preventing such exercise of jurisdiction. No such negative provision was brought to the notice

of the court. If any thing, the law declared by the Supreme Court in *M.C. Mehta (supra)* is not only binding on all courts, but acts as *a source of law, innovative in nature to meet an unprecedented new situation.*

20. It may be noted here that the law handed down in *M.C. Mehta (supra)* by the Supreme Court was stated in the affidavits of Shri Palkhivala and Shri Dadachanji, filed by UCC before Judge Keenan to answer whether the Indian courts could meet with innovative demands of such an unprecedented case (See: judgment of Keenan which the court certainly can refer to). The UCC relied upon this source of law in obtaining judgment on *forum-non-conveniens* and is therefore, bound by it.

21. That brings us to the next contention of Shri Nariman, learned counsel, that the Bhopal Gas Act and the scheme framed under it do not have any provision for granting interim relief and that the suit has been filed by the Union of India in representative capacity as "parens patriae" under that Act and, therefore, the court has no jurisdiction. For one, the provision of the Civil Procedure Code are not inapplicable to the suit and the jurisdiction under section 94 (e) read with section 151, C.P.C. withstands the Act and the Scheme framed under it. It is true that the powers under section 151 shall not be exercised if that be in conflict with an express provision negativing it. There is no provision in the Bhopal Gas Leak Act to prevent such jurisdiction.

22. For another, in the scheme framed under section 6 of the Act, we find a provision as to *"disbursal of amount of interim relief"* under clause 10(b). The strong argument about the scheme being post-adjudicative or pre-adjudicative certainly has some merit but then it can not be said that that it prevents disbursal of amount of interim relief before final adjudication. It appears that the scheme was framed at a time when the Union of India as 'parens patriae' was not sure of the forum and number of other eventualities and, therefore, probably did not pay much attention to the scheme. But now that in this court it has been finally decided that this court has jurisdiction and this court is the forum for the compensation suit, the Union of India will do well to work the scheme vigorously. The forms prepared by the directorate of claims under the executive orders could be considered to be taken up by the scheme by appropriate amendments in the subordinate legislation to avoid duplicity, confusion and to make up time.

Be that as it may, the Act, and the Scheme certainly do not prevent exercise of jurisdiction for grant of interim relief and if anything, clause 10(b) of the Scheme is a piece of subordinate legislation which provides for it and that provision can be made meaningful by the court exercising jurisdiction under section 94 and 151, C.P.C. to grant interim relief.

23. That brings us to the submissions of the learned Attorney-General about jurisdiction to reach UCC beyond the corporate veil of UCIL. Learned Attorney General submitted that the UCC owns 50.9% shares of UCIL. Mr. Nariman, learned counsel for UCC very fairly admitted this fact. The learned Attorney-General further argued that this 50.9% ownership of the shares of UCIL was enough to show that the UCC always had the power and capacity to control the working of UCIL. Learned Attorney-General refers to Gower on *Principles of Modern Company Law*, 4th Edn. pages 128....133, to argue that the corporate shell of the UCIL has to be cracked and the corporate veil has to be lifted to reach the UCC.

Reliance was placed on *D.H.N.:* (1976 (3) All England Reports 462) and *Escorts:* (A.I.R. 1986 S.C. 1370). Observations in this regard of U.S. Appellate Court are confined to question of forum, which is no more in dispute now. I need not dwell on this point in full depth as we are at an interlocutory stage and the reference to law as stated above would be adequate.

24. Where is the need for interim relief, asks the learned counsel for UCC by adverting to the advertisement issued by the State of M.P. enumerating the relief measures they claim to have taken for the gas victims and the provisions in the Act and the Scheme itself for the relief measures to be taken by the UOI. He further referred to defendant's written statement and response filed to the order of the court dated 2nd April, 1987 to say that UCC had offered number of items as relief but they were refused. The learned Attorney-General rightly replied that money offered was pittance and the UCC wanted to keep the administrative control over other relief-measures proposed, which the government would (sic) naturally could not accept as 'parens patriae'. And that left offer of one mobile van which was, to say the least, meaningless looking to the magnitude of the tragedy.

25. The ghastly tragedy took toll of more than 2700 lives and manifold more were injured. Some of them premanently disabled and as such unable to work. Thus in some cases the bread-winner was lost and in others limbs rendered helpless to win the bread. These and number of other cases certainly need immediate justice in their claims under the representative suit and certainly need payment of money as interim relief which can bring them an assured sum of money to keep their heart and soul together and to provide for health care. The need for immediate relief to the gas victims is so obvious that nothing more need be said.

26. As the penultimate leg, learned counsel for UCC argued that order of interim relief by way of interim payment could only be passed on some material before the court in the nature of quantity and quality otherwise the grant of interim relief and an order to the defendant of that nature, would not only amount to a decree before trial but would amount to even a penalty which is not contemplated by law. The answer is not very difficult. It can not be denied that an unprecedented tragedy took place on account of deadly leak from the UCIL's hazardous activity of storing such deadly material, the leakage of which could not be ruled out. Can it be disputed that more than 2700 persons have lost their lives? Can it be disputed that many more fold have become permanently disabled and others are still more who have suffered lesser injuries? Can the gas victims survive till the time all the tangible data with meticulous exactitude is collected and proved and adjudicated in fine forensic style for working out final amount of compensation with precision of quality and quantity? Will it not be prudent to order payment of a relative sum bearing in mind all the progress in the case so far, the facts and figures (though not undisputed) which have come on record and the material furnished during settlement efforts made by Judge Keenan? After all, interim relief is never and can never be exact like final adjudication in its very nature. We have to bear in mind all the aforesaid facts and circumstances and name a sum which would not be unjust to either side as an interim measure.

27. That leaves the only question that in the history of law of torts, no earlier case can be found in which it has been so done in a suit. The question can not be answered better than by quoting the eloquent dictum by Lord Denning in *Packer*

vs. *Packer:* as follows:-

> What is the argument on the other side? Only this, that no case has been found in which it has been done before. This argument does not appeal to me in the least. *If we never do anything which has not been done before, we shall never get anywhere. The law will stand still, whilst the rest of the world goes on and that will be bad for both.*

[See : *"The Discipline of Law"* by *Lord Denning* on the opening page.]

28. So law will not stand still. It will act in aid of justice to distressed gas victims to move ahead towards amelioration. Law activates the court and the court orders that *the defendant UCC will* deposit in this court a sum of *three thousand five hundred million rupees* for payment of *"substantial interim compensation and welfare measures" for the gas victims.*

29. Being interlocutory in nature, this order shall naturally be without any prejudice to the rights and defences of the parties to the suit and the counter-claim, that may be finally adjudicated.

30. Let me tell the gas victims that under 'The Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, and the Scheme framed, under it, a Judge of the M.P. High Court, Hon'ble Justice P.D. Muley has been appointed Commissioner for payment of compensation to and welfare of gas victims. The aforesaid amount of three thousand five hundred million rupees as *'substantial interim compensation'* shall be placed at his Lordship's disposal for welfare and payment of substantial interim compensation to the gas victims under the Act.

31. In view of the Act and the Scheme framed under it, it is not for this court to decide the mode or application of the aforesaid amount. However, the court is the primary place where the parties came for redress and as such, the court craves the indulgence of expressing its hope that the amount may be so utilized and harness as to achieve:-

(i) Disbursal of substantial interim compensation;
(ii) Health-care, and
(iii) Generation of employment potential for gas victims.

Modalities for identification for payment as also priority-categorisation like cases of death, permanent disability and so on will naturally be considered for 'substantial interim compensation' which may be something like Rs. two lacs in case of each death, Rs. one lac in case of total disablement to earn livelihood due to permanent disability and lesser amounts in categories of lesser injuries and so on. Of course they are all matters entirely within the jurisdiction of his Lordship under the Act.

32. The amount so ordered, shall be deposited in this court within two months from today.

Sd/-
M.W. DEO
District Judge
Bhopal

Dated : 17.12.87