

Indian Red Cross and Others

Vs

Union of India and Others

I.A. Nos. 6 and 7 of 1991 in Civil Appeal Nos. 3187-88 of 1988 and I.A. Nos. 2 and 3 of 1989 with SLP (C) No. 13080 of 1988

(M. N. Venkatachaliah, K Jayachandra Reddy JJ)

01.11.1991

ORDER

1. We have heard learned counsel on both sides.

2. In terms of the orders dated February 14/15, 1989 (Union Carbide Corp. v. Union of India, (1989) 1 SCC 674 : 1989 SCC (Cri) 243), approving a settlement the Indian Red Cross Society was required and obliged to account for the amounts received by it out of the 5 million US dollars made available by the Union Carbide Corporation through the American Red Cross. The Registrar of the Supreme Court was authorised to collect from the Indian Red Cross Society the balance remaining unspent as on February 15, 1989. The orders approving the settlement treated the said 5 million dollars as part of the Settlement Fund of 470 million US dollars.

3, According to the Indian Red Cross Society it had received only 4 million dollars out of the 5 million and the unspent balance as on February 15, 1989 was Rs. 3,43,81,045.45. But the Society appears to have permitted itself the liberty of continuing to incur expenditure out of this fund even after February 15, 1989. The Society says that the expenditure - of about Rs. 5 lakhs every month - was incurred by it on humanitarian and relief work for the benefit of the victims of the Bhopal Gas Disaster even after February 15, 1989 in order to maintain continuity of the medical and other relief measures which the Society had initiated at the instance and request of the American Red Cross. It would appear that the society had filed application before this court for approval of the continuance of the relief measures. But no steps for expeditious consideration of the prayer were taken by the Society nor any such approval granted. Indeed, by order dated October 3, 1991 (Union Carbide Corp. v. Union of India, (1991) 4 SCC 584), the claim of the Society to be exclusively entitled to deal with the 5 million dollars was rejected. In the circumstances the retention and appropriation of the amounts after February 15, 1989 was without the Court's approval. The funds in the hands of the Society as on February 15, 1989 were part of the Settlement Fund and any appropriation of any part of it for any purpose required approval and sanction by the Court as the matter was sub-judice.

4. The effect of the orders dated February 14/15 1989 as well as the final orders dated October 3, 1991 disposing of the review petitions and the Society petition for modification of the terms of the settlement treating the 5 million dollars as part of the Settlement Fund is that the Indian Red Cross Society should account for the entire unspent balance as on February 15, 1989 which it claims was Rs. 3,43,81,045.45 and pay the same to the Registrar of this Court to the credit of the said Settlement Fund. The claim of the Society that such unspent amount was Rs. 3,43,81,045.45 as on

February 15, 1989 has also to be verified was established with reference to its audited accounts and Auditors' Certificates.

5. The society appears to have remitted a sum of Rs. 2 crores on October 29, 1991 to the credit of the Settlement Fund. The balance of Rs. 1,43,81,045.45 has been refunded by the Society. Accepting the present offer to make an immediate further remittance of Rs. 37 lakhs, we permit the Society to remit the further sum of Rs. 37 lakhs, to the credit of the settlement fund within one week from today. The balance of Rs. 1,06,81,045.45 shall be paid after three months in terms of the directions contained in para 6 infra.

6. So far as the balance of Rs. 1,06,81,045.45 is concerned, it is open to the Society to move the Union Government or the appropriate authority competent to administer the Bhopal Gas Disaster Relief Fund under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and the scheme made thereunder to grant post facto sanction for the expenditure stated to have been incurred by the Society in carrying on its medical relief and humanitarian services for the benefit of the victims subsequent to February 15, 1989. Government or the appropriate authority, as the case may be, shall examine that prayer and consider whether such appropriation of the funds after February 15, 1989 was consistent with or permissible under the statutory scheme and dispensation and take an appropriate decision in that behalf and submit the same for the approval of this Court.

7. If the Society is unable to secure such a decision from the authorities within three months from today, the Society shall immediately thereafter make good the sum of Rs. 1,06,81,045.45 to the Settlement Fund.

8. If, however, the prayer of the Indian Red Cross Society before the government or the statutory authority, as the case may be, is granted and the same is approved by this Court, then the Society may not be liable to make good the sums respecting which such approval may be granted.

9. The Reserve Bank of India is directed to treat the sum of Rs. 2 crores credited on October 29, 1991 and the further amounts to be credited by the Indian Red Cross Society as well as by the American Red Cross Society of the balance of one million US dollars in its hands, as part of the Settlement Fund to be handled by the Reserve Bank of India under the Earlier orders of this Court, on the same terms and conditions as are contained in its letter No. DAD/9129/CA 15/Misc. 88-89 dated March 14, 1989.

10. Further the Indian red Cross Society shall also satisfy the Union Government or the authority administering the Bhopal Gas Relief Fund, as the case may be as to the correctness of its claim as to the position of the account as on February 15, 1989 and as to the balance outstanding as on that date.

11. Call this matter in the first week of February 1992 for report of compliance with the foregoing requirements by the Society.

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