
(1996) 06 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 109 of 1996

Cantonment Board Kasauli

APPELLANT

Vs

Bhagwan Dass and Others

RESPONDENT

Date of Decision : 24-06-1996

Acts Referred:

Cantonments Act, 1924 — Section 21, 21(3), 39
Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 39 Rule 1, Order 39 Rule 2, 115

Citation : (1997) 1 ShimLC 454

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : L.C. Sood, for the Appellant; Kuldeep Singh, for Respondent No. 1., for the Respondent

Judgement

Arun Kumar Goel, J.—This revision is directed against the judgment dated 12-1-1996 passed by District Judge, Solan, in C.M.A.No. 8-S/14 of 1995, whereby order passed by the Senior Sub-Judge, Solan in C. M. A. No. 408/6 of 1994 in case No. 450/1 of 1994 dated 15-12-1994 on application under Order 39, Rules 1 and 2 of the Code of Civil Procedure, has been upheld.

2. Background of the case out of which the present revision has arisen is that the Petitioner (hereinafter referred to as the Defendant) and the Respondents (hereinafter referred to as the Plaintiffs) as well as S/Shri Krishna Murti and Charan Dass (hereinafter referred to as the Defendants) were arrayed as such in a suit which was pending before the trial Court. The Plaintiff filed a suit for permanent prohibitory injunction wherein he prayed that Defendants be restrained by a decree of permanent injunction from holding election for the post of Vice President of Cantonment Board, Kasauli either on 5-10-1994 or any other date thereafter, as per resolution dated 23-8-1994 and from preventing the Plaintiff to act as a Vice-President of the Cantonment Board, Kasauli District Solan either by themselves or through their agents, servants and official members. Alongwith this suit, an application under Order 39, Rules 1 and 2, CPC

was also filed and interim injunction was prayed for in the aforesaid terms.

3. Admitted case of the parties is that Plaintiff is an elected member of Cantonment Board, Kasauli and it consists of four elected members, who have in turn elected him as a Vice-President and his term was to expire somewhere in the month of February 1997.

4. A requisition appears to have been sent for removal of the Plaintiff as Vice-President of the Cantonment Board. Vide Item No. 70 no confidence motion was taken up for consideration against Bhagwan Dass Plaintiff and it was resolved to remove him from the post of Vice-President of Cantonment Board, Kasauli. Thereafter, on 27-9-1994, agenda was circulated for meeting to be held on 5-10-1994 at 10 a.m. and after the removal of the Plaintiff, it was proposed to elect Vice-President of the Board. According to the Plaintiff, his removal being against the provisions of the Cantonments Act, 1924 and is thus not binding on him for the reasons detailed in the plaint.

5. This suit was contested and resisted by the Defendants and on hearing the counsel for the parties, trial Court vide Order dated 15-12-1994, has allowed the application of the Plaintiff and the defendants were restrained from holding election to the post of Vice-President of Defendant No. 1-Board and preventing the Plaintiff from acting as a Vice-President of the said Board till the disposal of the suit or till his present term as Vice-President expires or till he is lawfully removed whichever was earlier. This matter was taken up in appeal before the lower appellate Court and appeal of the Defendants has been dismissed, hence the present revision.

6. Before taking up the respective submissions of the parties, certain salient features of this case need to be noticed regarding which the parties have no conflict. Resolution removing the Plaintiff from the office of Vice-President was passed on 23-8-1994 as per averments made in the plaint. Suit in the present case was filed on 1-10-1994, i.e. more than 1-1/4 months after the order of removal of the Plaintiff from the office of Vice-President, was passed. Further, it appears that the Plaintiff was not aggrieved by his removal, what appears to have itched him is that the election of Vice-President which was fixed on 5-10-1994 by the Petitioner-Board. It is in these circumstances, that the suit was filed. When the matter came up before the trial Court on 3-10-1994, status quo as on that date was ordered to be maintained. From this fact, it is manifestly clear that the order of removal was operative on its own force and strength without anything being further done by the Petitioner-Board on and with effect from 23-8-1994.

7. Shri L.C. Sood, learned Counsel appearing for the Petitioner has stated that the impugned orders passed by both the Courts below, are not sustainable in the eyes of law on two grounds. Firstly, that in the nature of interim relief, the Plaintiff has been granted final relief which if he was successful was to finally get in the main suit itself and secondly the orders are perverse and those are not

supportable on the material on record as well as under the provisions of law.

8. So far first part of the submissions of the learned Counsel for the Petitioner is concerned, there appears to be substantial force therein both on account of law as it is applicable as well as on account of the conduct of the Plaintiff. In case the Plaintiff was genuinely hurt by the order of his removal dated 23-8-1994, in the ordinary course of things, he would have contested the said resolution forthwith, which he did not do. Instead he slept over the matter for about 1-1/4 months and when the agenda for election of Vice-President was issued for which purpose date fixed was 5-10-1994, then the Plaintiff came out of hibernation and has filed the present suit. In these circumstances, both the Courts below did not advert to this aspect of the matter. Admittedly on the date of filing of the suit, the order of removal of the Plaintiff as Vice President of Cantonment Board, Kasauli was already in force and had become effective. Unless that order is declared to be void and non-est, the Plaintiff was not entitled to the relief claimed for. Frame of the suit and the prayer made therein clearly shows that no declaration as such has been sought and injunction simplicitor has been prayed. In this view of the matter, no injunction could be granted as has been done by both the Courts below in favour of the Plaintiff when the said resolution was already in force and the Plaintiff had ceased to be Vice- President of the Petitioner-Board. Similarly, the grant of interim relief in the facts and circumstances of the present case tantamounts to grant of final relief which the Plaintiff was to get after trial of the case and on this count also the Plaintiff was not entitled to any relief whatsoever. It may further be pointed out in the context of the present case that there is no prima facie case for the grant of interim relief as held by both the Courts below in favour of the Plaintiff as also the balance of convenience and irreparable loss being in favour of the Plaintiff. Plaintiff had allowed the order to become effective of his removal himself from the office of Vice- President of the Cantonment Board Kasauli, as such, the delayed filing of the suit by the Plaintiff clearly showed that there was no question of irreparable loss being there which was likely to be suffered by the Plaintiff. For taking this view, a reference may be made to case Bank of Maharashtra Vs. Race Shiping and Transport Co. Pvt. Ltd. and another, and the relevant observations reported in paragraphs 12 and 13 thereof which are to the following effect:

12. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. See: Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, : AIR 1985 SC 330 ; State of Rajasthan and Others Vs. Swaika Properties and Another, relied on.

13. In the instant case since, there is serious dispute on facts it cannot even be said that a prima facie case had been made out for grant of an interim order in favour of the Respondents which enables them to have the reimbursement of the

sum of Rs. 95,000 that was debited to their account in view of the encashment of the cheque in question. We are of the view that this was not a case in which the High Court while admitting the Writ Petition should have passed an interim order giving such a direction. In the circumstances we are unable to uphold the said interim order passed by the High Court.

To the similar effect is the case Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others,

9. On behalf of the Plaintiff Shri Kuldip Singh Kanwar has forcefully argued that the removal of his client being violative of Section 21 of the Cantonments Act, 1924, the Courts below were justified and well within their rights to have allowed the application. At the same time, he has referred to the provisions of Section 39 of the said Act and has submitted that it does not control the provisions of Section 21 of the Act *ibid*. He has also submitted that the Plaintiff could not have been removed from the office of Vice-President with the aid of Section 39 of the Act *ibid* as has been done in the present case, because all the four elected members according to him, were required to participate in the meeting that was held on 23-8-1994 and 2/3rd ought to have voted in favour of the motion for the removal of his client from the office of the Vice-Presidentship. It is further argued that all ingredients for grant of interim relief like *prima facie* case, balance of convenience and question of the Plaintiff's suffering irreparable loss and injury have been fully made out and therefore the present revision petition, is not at all maintainable Shri Kuldip Singh, learned Counsel has further submitted that the Court is not powerless in an exceptional situation to grant interim relief in a mandatory form, therefore, on this ground, the revision must also fail according to him. Lastly, with the aid of cases Shri M.L. Sethi Vs. Shri R.P. Kapur, and The Managing Director (MIG) Hindustan Aeronautics Ltd. and Another, Balanagar Vs. Ajit Prasad Tarway, he pointed out that firstly, there is no jurisdictional error within the meaning of Section 115 of the CPC which calls for interference in the present revision and, as such, on this ground also the Defendants must fail in the present revision.

10. So far as the first submission of the learned Counsel for the Plaintiff is concerned, it *prima facie* appears that resolution passed on 23-8-1994 thereby removing the Plaintiff from the office of Vice-President, is in accordance with the law. For ready reference, the said Item from the agenda, copy of which has been placed by the Plaintiff in the Court below is extracted herein below:

AGENDA

70. No confidence motion against Vice-President Sh. Bhagwan Dass Cantonment Board, Kasauli.

Reference CBR No. 69, dated 30-7-1994.

To consider letter dated 30-7-1994 received from Sh. Krishan Murti and Sh. Charan Dass, elected Members Cantonment Board, Kasauli regarding no

confidence in the Vice-Presidentship of Sh. Bhagwan Dass.

Letter dated 30-7-1994 is put up on the table.

RESOLUTION

Of the two elected members present and voting, both noted in favour of the motion of no confidence motion as per Section 21(3) of Cantonment Act, 1924. The motion thus is passed and Sh. Bhagwan Dass, is hereby removed from the post of Vice- President, Cantonment Board, Kasauli.

So far Section 39 of the Cantonments Act, 1924 is concerned, it is exception to the general rule and prima facie it appears to be not subject to Section 21 of the Cantonments Act, 1924 as argued by the learned Counsel for the Plaintiff So far the question of their being requirements of law being fulfilled which are necessary for the grant of interim relief, it has already been held in this judgment that in the facts and circumstances of the case none existed in favour of the Plaintiff, as such, this contention of the learned Counsel is also rejected.

11. No doubt Court in a given situation as well as in exceptional cases, is competent to grant interim relief in mandatory form, looking to the facts and circumstances of the present case, no extraordinary circumstance, much less case has been made out by the Plaintiff for exercise of such discretion. Moreover, in the face of the two judgments of the apex Court referred to hereinabove, the Plaintiff is not entitled to interim relief which he was to get in the event of his success in the suit, therefore, this contention of the learned Counsel for the Plaintiff is also rejected.

12. Now coming to the two judgments of the apex Court, referred to by the learned Counsel for the Plaintiff, in support of his submissions that the revision is liable to be dismissed even if the findings recorded are erroneous both in law as well as in the fact. In this context, it is worthwhile to point out that on the day of filing of the suit i.e. 1-10-1994, the order of removal was operative on its own force for 1-1/4 months, and the Plaintiff was not at all aggrieved thereby. He only filed the suit on 1-10-1994, when on 27-9-1994 agenda for the meeting of 5-10-1994 was circulated and amongst other items, election to the office of Vice President was also fixed on that date. In the face of this factual position, the judgments cited by the learned Counsel in support of his submissions are wholly inapplicable and thus the Plaintiff cannot derive any benefit from both these cases.

13. As a result of the aforesaid discussion, the revision petition succeeds and it is allowed thereby setting aside the orders of both the learned Courts below and consequently the application of the Plaintiff under Order 39, Rules 1 and 2, CPC stands dismissed.

14. Looking to the controversy involved in this case, it will be in the interest of justice, that the trial Court may be directed to dispose of the case at the earliest and in no case later than 31-8-1996 This direction is necessary due to the fact

that the term of the office of the Plaintiff, if he succeeds in this suit has to continue upto February 1997. In this case issues were framed on 5-12-1994 and case was adjourned for 29-3-1995. Strangely enough Plaintiff did not care to take steps in accordance with the provisions of Order 16, Rule 1(a) of the CPC. Record of the trial Court shows that numerous opportunities have been given to the Plaintiff who has not cared to file list of witnesses, process fee and diet money. However, it appears that the Plaintiff was interested in marking time till February 1997 and by such time he would have continued to be in office under the orders of the Court. This observation has been made looking to the orders passed by the trial Court on 5-12-1994, 29-3-1995, 13-6-1995, 11-12-1995, 12-1-1996 and 29-2-1996. Parties will appear before the trial Court on 4-7-1996 and the case will be listed for Plaintiff's evidence to be produced by him at his own responsibility in the background of this case on 1-8-1996 and the Defendants will lead their evidence on 2-8-1996, where after, in case the Plaintiff wants to lead evidence in rebuttal, he would examine the same on 19-8-1996 and in this time schedule, the trial Court would finally decide the suit on or before 31-8-1996. Registry will ensure that the record of this case reaches the trial Court before the next date of hearing positively. Needless to point out that the trial Court will dispose of the suit in accordance with law without being in any manner influenced by any observation made in this judgment which is meant only for the purpose of disposal of the present revision petition. Parties are left to bear their own costs.