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**(1986) 08 GUJ CK 0011**  
**In the Gujarat High Court**

Kiritkumar M. Brahmhatt

APPELLANT

Vs

Director General of Police and Others

RESPONDENT

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**Date of Decision :** 07-08-1986

**Acts Referred:**

**Citation :** (1987) 1 GLR 325

**Hon'ble Judges :** A.P. Ravani, J

**Bench :** Single Bench

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## Judgement

A.P. Ravani, J.—The petitioner who is serving as Senior P.S.I. at Anand, District Kheda, challenges the legality and the validity of an order of his transfer from Kheda South to Computer Centre, Gandhinagar. Earlier, by an order dated September 4, 1983 it was directed that the petitioner be transferred from Anand to Gandhinagar District. The petitioner challenged the said order by way of Special Civil Application No. 4284 of 1983. The operation and implementation of the order of transfer was stayed by this Court and that is how the petitioner is still at Anand. There is no dispute with regard to the fact that the petitioner is serving at Anand for last about four years. The petitioner has challenged the legality and validity of the order of transfer, without producing a copy of the order on record. However, the counsel for the respondents has produced a copy of the said order which is dated July 8, 1986.

2. It is alleged that the order of transfer is actuated by mala fides. According to the petitioner the interim relief granted by this Court in earlier petition (Special Civil Application No. 4284 of 1983) was in operation and yet the order of transfer has been passed. The respondent-authority had initially considered the case of officers in whose respect the Court had granted stay and made an endorsement to the effect that "not to be disturbed because they are on stay". Thus while other officers who have been protected by the order of stay granted by one or other court, are not disturbed, but the petitioner alone is disturbed. Therefore, it should be held that the petitioner is singled out and hence it should be inferred that the order of transfer is actuated by mala fides.

3. In order to appreciate the aforesaid contention raised on behalf of the petitioner, the ad interim and interim orders passed by this Court in the earlier petition (Special Civil Application No. 4284 of 1983) may be examined. On 5-9-1983 the Court (V.V. Bedarkar, J. as he then was) passed the following order:

Notice pending admission returnable on 13-9-1983. Ad interim relief against transfer till further orders.

On 10-1-1984 the Court (N. H. Bhatt, J. as he then was) passed order as follows:

In the facts and circumstances of the case the facts (sic. affidavit) showing the reasons of transfer is required to be filed at the admission stage. I, therefore, direct the transferring authority to do so by next Tuesday, i.e. 17-1-1984.

Thereafter on January 24, 1984 the Court (N. H. Bhatt, J. as he then was) passed the following order:

Rule. Interim stay to continue in the meantime.

It may be noted that the petitioner had challenged the order dated September 4, 1983, by which he was transferred from Anand to Gandhinagar. If the aforesaid orders passed by way of ad interim and interim relief are read properly, the effect is that on the first date, i.e. on 5-9-1983, ad interim relief against the transfer was granted. This ad interim relief has been continued as per order dated January 24, 1984. Thus the respondent-authorities were restrained from effecting the implementation of the order of transfer in question. By no stretch of reasoning it can be said that the authorities were restrained from issuing another order of transfer, if the authorities thought so fit. This would be the only reasonable and proper construction of the orders of ad interim and interim relief passed by this Court. However, it would have been proper for the respondent-authorities to approach this Court and declare before the Court that in respect of the petitioner another order of transfer was being passed. If this is not done, it is at the most a case of an irregularity, but lapse on this count cannot be interpreted to mean that the impugned order of transfer is passed with mala fides. Therefore, the argument that despite the continuation of the operation of the order of this Court, the order of transfer is passed and therefore the authorities should be deemed to have been acting with mala fides cannot be accepted.

4. The second plank of argument on this score be examined. Even when other officers who were protected by the orders of stay granted by one or other court were not disturbed, the petitioner alone was disturbed and therefore it should be held that the petitioner's transfer was actuated by mala fides, also cannot be accepted. One does not know what were the orders passed by the Court in respect of other officers. One also does not know what were the specific individual facts and circumstances with respect to other officers. From the reading of the interim orders passed by this Court there is nothing to show that another order of transfer could not have been passed in respect of the petitioner.

There was no permanent stay order granted by this Court that the petitioner shall not be transferred to any other place permanently or till further order passed by this court. All that this Court had done was to stay the order of transfer which was under challenge, i.e. order of transfer dated September 4, 1983. Transfer is admittedly an administrative matter. If the authority thought that in the particular case of the petitioner he was required to be transferred to other place despite the fact that he had obtained interim order from this Court in earlier petition, it is not open to this Court to sit in appeal over the decision of the authority issuing transfer order. Therefore, this argument also fails.

5. On behalf of the petitioner it was contended that the petitioner was very strict and up-light person. He controlled the communal riots effectively in the town, which occurred in the month of June 1986 and for this purpose he had to round up some anti-social elements and filed chargesheet against them. According to the petitioner, such anti-social elements have, with the help of influential persons filed false complaints against him. Therefore, the respondent-authorities have passed the order of transfer relying on the false complaints made against him. It is contended in the petition that the persons who made complaints included representatives of people like Members of Legislative Assembly. It must be assumed for a moment that the decision to transfer the petitioner was taken by the respondent-authorities on the basis of the complaints made by a section of the people. It may also be assumed that the complaints were false. But, that would not attach stigma of mala fides to the order of transfer. The complaint, right or wrong, false and/or frivolous, if emanates from a section of the people and the same is backed by the chosen representatives of the people, the authority who has to run the administration and who has to look after the law and order situation in the town, has got to take into consideration such complaints also. Be it noted that the maintenance of law and order is the main concern of the Police Department. If the authorities felt that significant section of the population of the town was against a person holding responsible post in the place and that continuance of this person was not conducive to law and order situation in the town and if the person concerned was working at this particular station for a period of about four years, and if such officer were ordered to be transferred to another place, by no stretch of reasoning it can be said that the action of the authorities was actuated by mala fides. Complaints by a section of the people supported by a chosen representative of the people, is certainly a ground which must be taken into consideration by the executive officers be they in Police Department or any other Department. This is the very basis of democracy. In democracy people's voice reaches to the ears of the executive authorities through their chosen representatives. This voice has got to be heard and heeded to by the authorities exercising executive powers. Such complaints may be right, may be wrong. Even if the complaints are wrong and the feelings of the people may not be justified, the same will have to be taken into consideration by the executive authority. Because the, authority, and much more so an executive authority in Police Department, is required to look after the law

and order situation and see that the administration runs smoothly. In a given situation the officer concerned may be right in the approach adopted by him while dealing with a particular situation. But the people who may have never experienced the enforcement of strict discipline at the hands of police authorities may feel that the behaviour of the officer concerned was not proper and according to them, he might have exceeded his authority. The superior authority may, on examination of facts, come to the conclusion that the complaints made by the people were not justified. But, at the same time, the authority may legitimately feel that for the sake of soothing the people's feelings and for smooth running of administration, the officer against whom complaints are made be transferred. If such attitude is adopted by the executive authority, the same cannot by any stretch of reasoning, be said to be arbitrary or actuated by mala fides.

6. I am aware of a decision of this Court in the case of *Sahadeo v. Sainik Schools Society* reported in 23(1) GLR 149. In para 6 of the judgment it has been observed that if the transfer was made on the ground of complaint then it was definitely by way of punishment and hence an opportunity should have been given to him. The aforesaid observations made in the judgment should be understood in the context of the facts of the case. In that case, earlier the petitioner's service was sought to be terminated. The appellate authority modified the order and taking lenient view, transferred the petitioner. While transferring him complaints against him were taken into consideration and the relevant rules were also suitably amended. Therefore, in the facts and circumstances of the case, it was held that the order of transfer was by way of punishment and hence an opportunity should have been granted to the petitioner. Thus, the Court has not laid down the principle of universal applicability that in all cases of transfer based on complaints, the employee concerned should be afforded an opportunity of being heard. After all, transfer is a matter of adjustment and accommodation. The authorities are required to be given sufficient play at the joints. No hard and fast rule can be laid down restricting the discretion conferred upon the authorities in the purely administrative sphere in which the matters of transfer fall. In the instant case, by no stretch of reasoning it can be said that the order of transfer has been passed as a measure of penalty.

7. Some citizens of Anand town submitted an application for being joined as party. The Learned Counsel for the petitioner sought to rely on the averments made in the application. However, the application has been withdrawn by the counsel representing the applicants therein. Therefore, statements and averments made in the application cannot be made the basis to prove the allegations of mala fides.

8. On the basis of the order of transfer produced on record by the respondents, the Learned Counsel for the petitioner submits that the petitioner's name appears at Serial No. 525. The officers who have been transferred from Kheda

South are clubbed together on different page while the petitioner's name appears separately and not in the group of officers belonging to Kheda South. Therefore it is submitted that it should be held that the petitioner's name has been inserted afterwards and mala fides should be inferred from this circumstance. The argument cannot be accepted for the simple reason that the same is not based on correct facts. On page 11 of the order, there are officers from Kheda South whose names appear at Serial Nos. 317, 318 and 319. Thereafter, names of some officers from Ahmedabad (Rural) are shown. Then again the name of Police Officer of Kheda South is shown. Again from Serial No. 324, the names of police officers from Kheda South are shown. Similarly on pages 15, 16, 17 and 18 of the order, the names of officers from different districts have been shown. Therefore, simply because the petitioner's name has been inserted at Serial No. 525 and not along with the officers from Kheda South, whose names appear on page 11, it cannot be said that his name was inserted later on with mala fides.

9. No other contention is raised.

In the result, the petition fails and the same is rejected. Interim relief granted earlier stands vacated.

10. At this stage, the Learned Counsel for the petitioner requests that the operation and implementation of the aforesaid order rejecting the petition and vacating the interim relief be stayed for some time so as to enable the petitioner to challenge the legality and validity of the aforesaid order before superior forum as may be available to the petitioner. The Learned Counsel for the petitioner is agreeable to the condition that the petitioner shall proceed on leave. In view of this concession given by the Learned Counsel for the petitioner and in view of the fact that the petitioner shall proceed on leave, the operation and implementation of the aforesaid order rejecting the petition and vacating the interim relief is stayed till August 25, 1986.