

(1982) 12 GUJ CK 0034
In the Gujarat High Court

Natverlal Govanbhai Gajjar

APPELLANT

Vs

Director of Technical Education and Another

RESPONDENT

Date of Decision : 08-12-1982

Acts Referred:

Citation : (1983) 1 GLR 430

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—In this revision application the petitioner challenges the judgment and order dated 23rd August 1982, passed by the learned Joint District Judge, Surat, in Misc. Civil Appeal No. 1 of 1982, whereby the lower appellate Court had upheld the judgment and order of the trial Court, rejecting the application of the present petitioner for interim relief.

2. At the outset, it must be pointed out that in this revision application, a notice was issued by this Court to both the respondents on 10th September 1982. The notice was made returnable on 15th September 1982 (Coram : B.K. Mehta, J.). As the notice was not received back on 15th September 1982, the matter was allowed to stand over to 23rd September 1982. On that day also nobody appeared on behalf of the respondents, hence this Court issued a Rule returnable on 4th October 1982. The said returnable date was extended to 18th October 1982 and on 4th November 1982, the Court (Coram : N.H. Bhatt, J.) directed this matter to stand over beyond the Diwali vacation. Since the reopening of the High Court on 22nd November 1982, this matter has been on the Board for final hearing, but neither of the two respondents has cared to appear. This is indeed strange behaviour on the part of the respondents, who are Government officers of high rank. The Respondent No. 1 is the Director of Technical Education and his office is located at the Government Polytechnic compound, old Sachivalaya, Ahmedabad. The respondent No. 2 is the Secretary, Education Department, Government of Gujarat, Gandhinagar. We have no choice, but to express our anguish at this kind of attitude on the part of the Government officials, who,

even after the service of the notice and the Rule, have chosen to ignore the same and have not found it convenient to appear before the Court and assist the cause of justice. It would be expected of the Government officials that while carrying out their routine work which may possibly be quite heavy to render assistance to the Court in the matters in which Courts require their assistance. The State happens to be the most prolific litigant in the country and if it chooses to ignore the Courts' notices, orders or directives, it would become rather difficult for the Courts to function effectively.

3. One more aspect which is required to be noted here is that when a copy was sought to be served by the petitioner on the Government Pleader in the High Court, the Government Pleader's office has refused to accept the copy. There is an endorsement on the petition to that effect. If the Government officers choose not to appear before the Court, the Court has no option, but to decide the matters without any assistance from them. Accordingly, the present petition is heard and disposed of, after hearing the learned Counsel for the petitioner only.

4. The present petitioner had filed the Regular Civil Suit No. 4477/81 in the Court of the Civil Judge (Senior Division) at Surat, challenging the order of his transfer on various grounds, including the one of mala fides. He had prayed for the interim relief staying the impugned order of transfer. The trial Court was pleased to reject the application for interim relief. The present petitioner filed an appeal before the District Court at Surat. The learned Joint District Judge, Surat had dismissed the appeal and confirmed the order of the trial Court. When the order of transfer is challenged on various grounds, including mala fides, the same is to be decided on the evidence that the parties may lead before the Court. It seems somewhat unreasonable, not to grant the interim stay against the impugned order of transfer. The learned appellate Judge has observed in his order as follows:

...There does not appear to be any mala fides in not communicating the order earlier. At any rate the plaintiff was not prejudiced, because on that very day, 28-4-81, he could knock the doors of the Civil Court for injunction.

5. The learned Judge has expressed doubt regarding the fact whether non-communication of earlier order would amount to mala fides or not. It is alleged that the petitioner is sought to be transferred from Surat because some favourite, who is the native of Surat, is to be posted there in place of the petitioner. If this allegation is correct, the impugned order may well be held to be mala fide. As that question is yet to be decided, it would not be proper for the Court to refuse the interim stay of the operation of the impugned order of transfer. Mr. A.K. Mankad, the learned Counsel for the petitioner states that the impugned transfer order is not yet put into effect and the petitioner is still continued to serve at Surat, from where he was sought to be transferred. It would be appropriate to grant him the interim relief as prayed for and to allow him to continue to serve at present where he is. In the circumstances of the case, it would be appropriate to expedite the hearing of the suit. The trial Court

is directed to take up the hearing of the suit immediately and to dispose of the same by a judgment and decree on or before the 28th February 1983. In the result the Rule is made absolute with no order as to costs.