

(1995) 06 KL CK 0030
In the High Court Of Kerala
Case No : W.A. No. 220 of 1995-A

P. Raghunandanan

APPELLANT

Vs

Regional Transport Authority, Palakkad and Others

RESPONDENT

Date of Decision : 02-06-1995

Acts Referred:

Constitution of India, 1950 — Article 226(3)

Citation : AIR 1996 Ker 115 : (1995) 3 ILR (Ker) 407

Hon'ble Judges : N. Dhinakar, J;K.T. Thomas, J

Bench : Division Bench

Advocate : K.C. Sankaran, for the Appellant; Thomas Chakrampilly, Govt. Pleader and N. James Koshy, for the Respondent

Final Decision : Dismissed

Judgement

Thomas, J.—Though the provision is explicit in the Constitution, it is seldom resorted to by parties aggrieved by interim ex parte orders passed by this Court in writ petitions. When it was pointed, in this writ appeal, to the counsel for the appellant that he could have availed himself of the benefit of the provision contained in Article 226(3) instead of challenging the interim order learned counsel has opted to do so. However, the writ appeal has to be disposed of by a judgment.

2. Appellant was the third respondent in an original petition filed by the Kerala State Road Transport Corporation (for short "the KSRTC") under Article 226 of the Constitution in challenge of a judgment passed by the State Transport Appellate Tribunal (for short "the STAT") on a civil miscellaneous petition filed along with the said original petition. Learned single Judge, before whom the original petition came up for admission, granted an interim order staying the operation of the judgment of the STAT. This happened on 18-1-95. Notice was ordered to the third respondent in the original petition, who is the appellant here. He entered appearance and submitted a petition on 24-2-95 praying for vacating the stay order dated 18-1-95. Notice of the said petition was furnished to the

standing counsellor the KSRTC as well as the Government Pleader. As the ex parte interim order was not vacated, this appeal was filed by the appellant in challenge of the ex parte interim order. When it was taken up for admission, we heard both sides. We felt that it was unnecessary for us to deal with this appeal as the ex parte interim order would have stood vacated on the expiry of two weeks from 24-2-95.

3. The factual matrix, as stated above, is not in dispute. Hence we need only to show how the ex parte interim order stood vacated. Article 226(3) of the Constitution reads thus :

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under Clause (1), without -

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated."

It is apparent that the said provision is a self-operating one which has been inserted in the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978. If six conditions conjoin together, the sub-article operates itself and the by-product is erasure of the interim ex parte order. Those six are the following:

- (1) An interim order should have been made on a petition filed under Article 226.
- (2) Such interim order was passed against a party without furnishing copy of such petition and all documents in support of the plea for such interim order.
- (3) Such interim order was passed against that party without giving him an opportunity of being heard.
- (4) That party should have made an application for vacating the interim order.
- (5) That party should have furnished a copy of such application to the other party (or his counsel) in whose favour the interim order was made.
- (6) The High Court should have failed to dispose of the application within two weeks from the date of receipt of the application (or the date of service of its copy, whichever is later).

4. On fulfilment of all the above conditions, the sub-article operates without anything more to be done.

5. The standing counsel for the KSRTC contended that there was no fault on the part of the KSRTC in having the application disposed of by the learned single Judge and, therefore, vacation of the interim order cannot be done to the detriment of the KSRTC. He pointed out that neither the learned single Judge nor this appellate forum need do anything to the detriment of any party as the sub-article operates suo motu. The position is when the interim order is passed nobody has done anything to the detriment of any other party, but it is only a resultant position being the corollary of a combination of certain factors.

6. When a similar contention was advanced before the Rajasthan High Court in *Gheesa Lal v. State* AIR 1981 Raj 651 it was held by Lodha, J. (as he then was) that a party who obtains ex parte order behind the back of the respondents should be vigilant to get it affirmed after permitting an opportunity of hearing to the other side; in case after obtaining ex parte stay order, petitioner fails to discharge his duty and prolongs ex parte stay order he can do so at his own peril. The Calcutta High Court also had occasion to consider the similar contention and A. M. Bhattacharjee, J. (as he then was) in *Krishan Kumar Agarwala Vs. Reserve Bank of India and others*, repelled the contention and held that the provisions of Article 226(3) are mandatory. It must be remembered that the operation of the sub-article does not result in disposal of the application for interim order or even the application for vacating the interim order since it is open to the High Court to pass fresh orders on the application after hearing both sides. But that aspect is not sufficient to forestall the automatic operation of the sub-article resulting in vacating the interim order.

7. In view of the above legal position, it is unnecessary for us to retain this writ appeal. As the impugned stay order is not subsisting now, we dispose of this appeal without going into the merits of the other contentions.