

(2002) 12 J&K CK 0020
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 483 of 2002

State of Jammu & Kashmir and Others	APPELLANT
Vs	
Dr. Gian Chand	RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 39

Citation : (2003) 2 JKJ 110

Hon'ble Judges : B.C. Patel, C.J;S.K. Gupta, J

Bench : Division Bench

Advocate : Seema Sheikher, GA, for the Appellant; Nemo, for the Respondent

Judgement

B.C. Patel, Chief Justice

1. The State Government has preferred this appeal against the order passed in CMP No. 2086/2002 on 29.08.2002. Ordinarily, while passing an order staying the operation of the order under challenge, the Court is not required to give reasons. In the instant case, learned Single Judge on 29-

08-2002, in SWP No. 2281/2002, made an order in CMP No. 2086/2002, by directing that the present status of respondent as Director, Indian

System of Medicines, shall not be altered. The learned Single Judge disposed of the CMP finally on the same day without issuing the notice to the appellant.

2. The grievance made by the State-appellant is that no notice was issued in the CMP. It is further submitted on behalf of the State, that if an ad-

interim order was made and after hearing the State, the order was made, the matter would have been different. It is contended that without hearing

the State, the application could not have been disposed of. The Apex Court has

pointed out on number of occasions that when an interim order is passed, principles as applicable for grant of injunction are required to be borne in mind as envisaged in Order 39 of the Civil Procedure Code. In the instant case, as pointed out by the learned counsel appearing for the State, that the respondent was merely given the charge on account of urgent situation. He was not even Deputy Director and substantively he was holding the post of Assistant District Medical Officer (Ayurvedic) in the Indian System of Medicines.

3. If the order would have been passed after hearing the State, even if the position would have been altered during that period, it could have been restored by the Court. Without hearing the other side and without recording the reasons, if such relief is granted, looking to nature of relief, it would amount to allowing the petition. The Apex Court in case of Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd. and Others, deprecated the grant of ad-interim relief which would constitute the main relief. Their Lordships held as under:-

.....There are, of course, cases which demand that interim orders should be made in the interest of justice. Where gross violations of the law and injustices are perpetrated or are about to be perpetrated, it is the bounden duty of the court to intervene and give appropriate interim relief. In cases, where denial of interim relief may lead to public mischief, grave irreparable private injury or shake citizen's faith in the impartiality of public Administration, a Court may well be justified in granting interim relief against public authority. But since the law presumes that public authorities function properly and bonafide with due regard to the public interest, a Court must be circumspect in granting interim orders of far reaching dimensions or orders causing administrative, burdensome inconvenience or orders preventing collection of public revenue for no better reason than that the parties have come to the court alleging prejudice, inconvenience or harm and that a prima facie case has been shown. There can be and there are no hard and fast rules. But prudence, discretion and circumspection are called for. There are several other vital considerations apart from the existence of a prima faice case. There is the question of balance of convenience. There is the question of irreparable injury. There is the Question of public interest. There are many such factors worthy of

consideration

4. The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for and

considering demands of the situation keeping in mind the presumption regarding the act of public authorities. Public authorities are functioning

properly and bona fide. They are required to act in public interest. Therefore, in such cases, if it is pointed out that the authority is acting contrary

to the provisions of law, the Court may issue a notice or at the most grant ad-interim relief for a very limited period and after hearing the parties,

may pass appropriate orders. The Court is required to struck the delectate balance after considering the pros and cons of the matter. We should

not forget that public authorities are working in the interest of public at large. The Apex court has also pointed out that mere establishing a prima

facie case, could not be said to be a justification for granting the interim orders. In case of Union of India Vs. Era Educational Trust and Another,

at page 59, the Apex Court pointed out as under:-

6. It may be pointed out that Order XXXIX CPC would not be applicable at the stage of granting interim relief in a petition under Article 226 or

227 of the Constitution, but at the sametime various principles laid down under Order XXXIX for granting ad interim or interim reliefs are required

to be taken into consideration. In the case of Morgan Stanley Mutual Fund v. Kartick Das after considering the various authorities this Court laid

down the guiding principles in relation to grant of an ad interim injunction which are as under : (SCC pp. 241-42, Para 36)

36. As a principle, exparte injunction could be granted only under exceptional circumstances. The factors which should weigh with the Court in

the grant of exparte injunction are -

(a) whether irreparable or serious mischief will ensue to the plaintiff;.

(b) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve;

(c) the court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a

party in his absence is prevented;

(d) the court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction;

(e) the court would expect a party applying for ex parte injunction to show utmost good faith in making the application;

(f) even if granted, the ex parte injunction would be for a limited period of time;

(g) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court.

5. In view of the aforesaid situation, we admit this appeal and order impugned passed in CMP No. 2086/2002 is stayed by way of ad-interim

relief. Notice as to interim relief returnable on 23rd December, 2002.

6. Yesterday the matter was heard for some time. Assurance was given by the learned counsel for the respondent that they shall remain present in

the Court. However, despite assurance, they are not present and had not informed the court about their non-appearance. It seems that on account

of a call by the Association they may not have remained present.

Notice be issued forthwith.