

(1984) 12 GUJ CK 0003
In the Gujarat High Court

Union of India (UOI) and Others

APPELLANT

Vs

Jitendra Shantilal Bhatt and Another

RESPONDENT

Date of Decision : 17-12-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2

Citation : (1985) 1 GLR 509

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

Bench : Single Bench

Judgement

A.P. Ravani, J.—Obtain ad interim relief. Thereafter go on filing sick note and on one or another ground (or pretext) avoid hearing of the application for interim relief. Can any one extend the life of ad interim relief in this fashion? What should weigh with the court while staying the operation and implementation of the order of transfer of an employee? These are some of the questions which will be answered very soon.

2. The petitioners-Union of India and other office bearers are the original defendants. The respondents-original plaintiffs are serving as Sepoys in Group "D" posts in Customs Department at Bhavnagar. They filed a suit being Civil Suit No. 712 of 1984 in the Court of Civil Judge (SD), Bhavnagar, and prayed that the order of their transfer dated July 13, 1984, from Bhavnagar Jetty Port to Customs Division, Bhavnagar, be quashed and set aside. The suit has been filed on August 14, 1984 and on the same day, the respondents obtained an order directing the petitioners-defendants to maintain status quo up to August 22, 1984. Thereafter, order directing to maintain status quo has been extended from time to time mainly on the ground that the learned advocate appearing for the plaintiffs was sick and therefore, unable to attend the court. Feeling exasperated by such tactics played by the plaintiffs and on account of the indifferent attitude exhibited by the trial court, the petitioners preferred the present revision application before this Court on December 5, 1984. A direction was given to the trial court on December 6, 1984 to hear and decide the application Exh. 5 latest before

December 11, 1984, The attention of the trial court was drawn to the provisions of Order 39 Rule 3 A of the CPC and to a decision of this Court in the case of Taragauri Kalyanji v. District Panchayat, Jamnagar, reported in 1984 GLR 589. Probably because the counsel for the plaintiffs did not cooperate, the trial court could not decide the application Exh. 5 and further adjourned the hearing. In these circumstances, order passed earlier on December 6, 1984 has been cancelled and the matter is entertained and admitted. Both the respondents-plaintiffs have been served and they have been heard.

3. At least there are two reported decisions of this Court on the question of entertaining matters pertaining to transfer and the interim relief to be passed in such cases. They are:

(1) Taragauri Kalyanji v. District Panchayat Jamnagar 1984 G.L.R. 589.

(2) Sugalal Govindra v. Western Railway 1984 G.L.R. 581. In Taragauri's case (supra), the Division Bench of this High Court (Coram: P.S. Poti, C.J. and G.T. Nanavati, J.) has observed as follows:

...Any subordinate civil court, merely because a suit is filed alleging that there is mala fides in the transfer, would not be justified in passing an interim order staying the transfer even if there is a plea of mala fides remembering that mala fides succeed very rarely and it is not easy to make out successfully the case of mala fides. Courts should well be aware that it is not to take any and every statement of mala fides as deserving of notice for grant of interim relief. The practice of staying such transfers by subordinate civil courts, we notice, from figures supplied to us, has become so rampant that it is time that we consider whether this does not amount to an abuse....

4. In another decision rendered by Talati, J., it is in terms held that injury of any other kind referred to in Order 39 Rule 2 of the CPC would not cover the hardship or injury resulting from an order of transfer. A injury referred to in the aforesaid Rule must have some relation with the breach of contract or act or omission which is contrary to law and which might result in infringement of right vested in a person. When personal rights are not involved, there is no question of injury such as injury of any other kind referred to in Order 39 Rule 2 of the Code of Civil Procedure.

5. In the instant case, it is obvious that the powers of the civil court have been invoked with a view to abuse the process of the court. Furthermore, it is clear that delaying tactics have been adopted by the advocate for the plaintiffs. The respondents-plaintiffs have succeeded in avoiding the order of transfer because the trial court also remained indifferent. The respondents-plaintiffs are sought to be transferred from one office to another office in Bhavnagar town itself. The contention that the order is actuated by mala fides is denied in the written statement as well as in reply to Exh. 5 application, both of which are submitted in court as far back as August 28, 1984. It is pointed out in the written statement that all other Group "D" employees have been transferred from Bhavnagar Jetty

Port to other places while these two employees only were left out, and now they are; also being transferred. Thus, there is no case of discrimination whatsoever.

6. Despite these facts having been brought out clearly on record, the trial court went on adjourning the matter on the ground that the advocate for the respondents-plaintiffs had filed sick note. After obtaining ad interim relief, if the learned advocate for the plaintiffs had fallen sick, it was his duty to see that the matter is transferred to somebody else. The trial court should have borne in mind that just as ex-parte ad interim relief can be granted, it can be vacated also in the absence of the advocate of the plaintiff. After obtaining ad interim relief, wherever it is reasonably found that the plaintiff or his advocate is adopting dilatory tactics and is remaining absent on one or another pretext, the court has a duty to assert itself. In such cases, the court would be duty bound to proceed further with the matter in accordance with law. The court and the defendants cannot be left at the mercy of "sick advocate". A feeling should not be created amongst the members of the litigating public that the duration of the ad interim relief obtained ex parte can be extended by merely filing a sick note.

7. The trial court must have realised that staying of a transfer order has far-reaching consequences as far as the public administration is concerned. Such ad interim order results into administrative inconvenience. There may be cases where it may be difficult to show on record as to how the transfer of a particular employee was necessitated. Many a times transfers are required to be made by the executive authorities on account of the fact that there may be allegations of corruption and malpractices. Just as the allegations of mala fides are difficult to be proved, similarly, the allegations of corruption and malpractices are almost impossible to be proved. But at the same time, in the interest of dean public administration and to see that the public at large is relieved from the oppression perpetrated by such type of employees, they are required to be removed to other places and their connections are at least temporarily snapped. Therefore, simply because some grounds of mala fides are made out here or there, or some breach of certain guidelines, or of certain rules is pointed out, it should not be held that there is a case for staying the order of transfer at the stage of initiation of proceedings. In the case of *Shantakumari v. Regional Deputy Director Health Services, Patna*, reported in AIR 1981 SC 1577. the Supreme Court has held that "transfer of a government servant may be due to exigencies of service or due to administrative reasons. The courts cannot interfere in such matters.

8. While considering the allegations of mala fides, the court must bear in mind that there is a strong presumption in favour of the action of the public authority. The actions taken by the public authorities are presumed to be bona fide and in public interest unless the contrary is proved. In the case of *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and Ors.* Civil Appeal No. 4742-430 F 1984 decided on November 13, 1984, the Supreme Court has held as follows:

...But since the law presumes that public authorities function properly and bona

fide 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....

The aforesaid observations made by the Supreme Court equally applies to the cases where an employee challenges the order of his transfer.

9. In cases where the court finds that a strong prima facie case is made out indicating the gross violation of rules or violation of self-declared policy relating to transfer resulting into discrimination or where the strong case of mala fides is made out, the court may be justified in interfering with the order of transfer. But even in such cases it would not be proper to grant ex-parte ad Interim relief and stay the operation and implementation of the order of transfer without imposing terms. In such cases the employee concerned should be asked to proceed on leave and the authority concerned may be directed not to fill in the post meanwhile. In order to see that the process of the court is not abused, a further term should be imposed upon the employee that in case he fails to get interim relief, he would not be entitled to receive any salary whatsoever for the period during which he enjoyed the protection of the order of the court. Imposition of such conditions would dissuade the people from abusing the process of court. Ordinarily, in no case by an ex-parte ad interim order, the employee ordered to be transferred should be permitted to serve on the post from which he is sought to be transferred.

10. Even when a course as indicated above is adopted, the court cannot be oblivious of the provisions of Order 39 Rule 3A of the Code of Civil Procedure. The provisions of the Rule read as follows:

Court to dispose of application for injunction within thirty days. 3A. Where an injunction has been granted without giving notice to the opposite party, the Court shall make an endeavour to finally dispose of the application within thirty days from the date on which the injunction was granted, and where it is unable so to do, it shall record its reasons for such inability.

11. The aforegaud provisions enjoin a duly upon the court to dispose of the application within 30 days from the date on which the ex parte ad interim injunction is granted. In case the court is unable to do so, it is required to record its reasons for such inability. In the instant case, the trial court has not even recorded its reason for not disposing of application Exh.5 within 30 days from the date of its ex parte interim order. The ex parte interim order has been passed on August 22, 1984. Thereafter, till today the ad interim injunction has remained in force. The trial court has thus failed to observe the provisions of Order 39 Rule 3A as well as it has failed to comply with the directions given by this Court. Tills statutory provision is made with a view to see that ex parte ad interim orders are

not passed by the courts indiscriminately and also with a view to see that the people are dissuaded from utilizing the court machinery as and by way of abuse for their private selfish gains.

12. In the instant case, it is obvious that there is no case of mala fides. The plaintiffs have been transferred from one office to another office in the same town. There is no question of gross violation of any rule or self-declared policy. The trial court has passed order contrary to the principles laid down in the decisions of Supreme Court and of this High Court. The plaintiffs have misused the process of court and have subsequently prolonged the life of the ad interim order by adopting dilatory tactics. Therefore, the order passed by the trial court is required to be quashed and set aside.

13. In the result, the revision application is allowed. The order passed below application Exh.4 directing respondent No. 3-Superintendent of Customs. Parimal Chowk, Bhavnagar, to maintain status quo is quashed and set aside. The trial court is directed to submit its explanation as to why it has failed to comply with the directions given by this Court. The explanation should be submitted within a period of 15 days from the date of receipt of the writ of (his order. Office is directed to place the matter before me together with the explanation that may be received from the trial court. Rule made absolute to the aforesaid extent with no order as to costs.