

(2001) 01 AHC CK 0097
In the Allahabad High Court

Case No : C.M.W.P. No. 49680 of 2000 with seven other writ petitions

Vishnu Dutt Sharma

APPELLANT

Vs

Regional Joint Director of Education, Agra and others

RESPONDENT

Date of Decision : 10-01-2001

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 13, 14

Citation : AIR 2001 All 165 : (2001) 1 AWC 721 : (2001) 1 UPLBEC 693

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Ashok Bhushan and Anil Bhushan, for the Appellant; S.C., Sanjai Sharma and Vinod Sinha, for the Respondent

Final Decision : Disposed Of

Judgement

V. M. Sahai, J.—The questions that arise for consideration is whether an application for extension of time-bound stay order is necessary and whether it must be heard by the same Judge or it could be heard by another Judge who is ceased of the Jurisdiction as a result of rotation of Bench?

2. Sri Anil Bhushan, learned counsel for the petitioner has urged that once a time bound interim order is passed by the Court after application of mind, then unless the stay order is vacated by this Court, till then the interim order will continue to be operative and it cannot exhaust or automatically stand vacated on the expiry of the period or date mentioned in the interim order.

3. On the other hand, Sri Vinod Sinha the learned counsel for the respondent No. 3 has vehemently urged that while passing a time bound interim order, the Court has not concluded the hearing of the stay application and the learned Judge was in the process of hearing the matter and the stay application has to be decided by the same Judge as provided by Chapter V, Rule 13 of the Allahabad High Court Rules, 1952 (in brief "rules of the Court") and only he can extend the stay order as the stay application on which the interim order was passed remained

pending. He further urged that even if a stay extension application is moved, it is for the same object and purpose for which the initial stay application was filed, therefore, it can only be heard by the same Judge who has passed the interim order and not by another Judge who is ceased of the jurisdiction by rotation of Bench. He urged that after the expiry of the period mentioned in the time bound stay order, the stay order exhausted and unless the stay order is extended before the expiry of the period fixed in the order or it is extended or a fresh order is passed, it cannot be revived. He urged that it will depend upon the language of the interim order whether the stay order will exhaust on a particular date fixed by the Court or it will be deemed to be continuing. The learned counsel further urged that once a counter-affidavit is filed along with the stay vacation application, then the stay order could not be deemed to be continuing. Sri S. N. Srivastava the learned standing counsel appearing for the respondent Nos. 1 and 2 has supported the argument of the learned counsel for the respondent No. 3.

4. An interim order is generally passed to preserve the state of affairs obtaining on the date of institution of proceedings. The Constitution Bench of the Apex Court in *Shri Kihota Hallohon v. Mr. Zachillu and others* AIR 1992 SC 412, in paragraph 51 held as below :

The purpose of interlocutory orders is to preserve in status quo the rights of parties, so that, the proceedings do not become infructuous by any unilateral overt acts by one side or the other during its pendency."

The interim order is granted where the Court is satisfied that prima facie case, balance of convenience and irreparable loss is in favour of a person claiming interim order. Such orders may assume different forms depending upon exigency of circumstances. But the usual interim orders granted are either until further orders or time bound that is for specific period mentioned in the order or till the next date of listing or till the next date of hearing. The time bound interim orders, appear to me to be granted, because the Judge is not satisfied to grant complete or unlimited order or till further orders of the Court. Yet the order is granted to protect the interest of the petitioner for a short while to enable the petitioner to furnish further details or information as required by the Court or till the respondent, in the meanwhile, files its counter-affidavit. It also avoids injustice which may be caused by the interim order to the respondent for long as the case comes up again for consideration after short time or till either the respondent appears or the petitioner is able to make out a case for such order which may last till it is vacated or till the petition is heard. Further it manifests anxiety of the Judge to decide the dispute at the earliest. The object of time bound interim orders are defeated, at times, by the change of jurisdiction of the Judge who granted the order. To take an example, before a Judge "X" a matter is argued on three points a, b and c. The Judge "X" is of the opinion that points a and c have no substance but on point b, it calls for a counter within three weeks and rejoinder affidavits within two weeks and fixes the matter after five weeks

and for a period of five weeks, grants interim order. Before the expiry of period of five weeks, the jurisdiction due to rotation of Benches changes and is vested in Judge "Y". Before Judge "Y", the arguments start afresh and he hears the entire matter de novo and even points a and c pressed before him as it is not known to him as to on what point Judge "X" had granted interim order. This results in colossal waste of time of the Court. If ten matters in which there is time bound stay orders have been passed are listed for stay extension, which is normally taken up after lunch Judge "Y" may either extend the interim order without adjudicating on the matter or if he tries to adjudicate, all the points a, b and c may be pressed before him. The result is that entire time of the Court after lunch is consumed in hearing matters in which time bound interim orders have been passed and the matters placed in the cause list by the order of Hon"ble the Chief Justice remains usually untouched. To avoid this, the learned counsel for the respondents argued that if the matter is taken up by the Judge "X" who had granted the time bound interim order, the matter can be disposed of early by him as he is well aware of the case and the case would be argued before him on point b only. And even if other points are argued, it can be decided without much loss of time. Reliance is placed by the learned standing counsel on Chapter V, Rule 13 of the rules of the Court and it is argued that this Court has held that such orders do not exhaust or cease to operate after expiry of time. Once application for extension of time bound order is moved since the effect of such extension would be the same as the interim, order itself, therefore, extension of the interim order can, only, be done by the same Hon"ble Judge who passed the time bound interim order, if he is available.

5. The argument cannot be accepted as it overlooks Chapter V, Rule 14 which specifically provides that a case shall not be treated as tied-up to the Bench which granted the ex parte order. Therefore, it is not possible to accept the request of the learned counsel for the respondents to direct such applications for extension of interim order to be listed before the learned Judge who granted the interim order. At the same time, this Court is reeling under mounting pressure of arrears. The efficacy of time bound interim orders may be there but it has added to the burden. The Benches are normally rotated after two or three months. The petition is heard by other Judge. He has to hear the matter afresh. The result is that when jurisdiction is changed after two or three months, he is faced with such a situation that he is left with no time to devote to the cases listed before him and there is pressure for extending the stay order. The Court cannot afford to lose valuable time everyday in hearing and disposing of such applications. This Court has held that such orders do not exhaust or cease to operate after expiry of time mentioned in the order. In *Shiksha Prasar Samiti, Allahabad and another v. Registrar, Societies, Chits and Firms, U. P. Lucknow and others* (1998) 1 UPLBEC 399, the Division Bench held in paragraph 12 as under :

"..... Limited interim orders are passed by the Court to prevent misuse of the same. Quite often it does happen that limited interim orders are not extended on the date of expiry by this Court for want of time or for various other reasons. But

normally whenever the case is next taken up, the interim orders are extended unless the matter is decided on the same day or the interim order is vacated by a specific order after hearing the parties. During such gap, the authorities must wait for reasonable time and should refrain from passing order advantageous to one party. We have no hesitation in saying that these two petitions have come before us on account of the undue haste and unreasonable attitude adopted by respondent No. 2. He ought to have watched at least for a reasonable time and must have waited to see as to whether this Court extended the stay order further or vacated the same or decided the writ petition finally"

6. This Court has been facing this problem of time bound interim order since long. In *Ashiq Ali v. Mohd. Shakeel and others* 1985 (3) LCD 362, it has been held by this Court that a time bound stay order till the next date of listing of the case would not automatically exhaust or come to an end on the date the case is listed in the cause list. If the matter is not taken up, the stay order would continue till the next date of listing. This Court in another decision in *Shambhoo Nath Singh Yadav v. State of U. P.* AIR 1994 32, has held as under :

"It has been submitted at the bar that the Court below will proceed with the case until the order is extended today. In my opinion, the order passed by this Court on 28.5.1993 is amply clear and it means that further proceedings in the case shall remain stayed until the order is modified or vacated by some subsequent order. The words "till the next date of listing" implies that the case is listed and some further order is passed. I do not agree that the words "till next date of listing" should be interpreted literally. If a narrow and literal interpretation is given to the above words, it will lead to uncertainty and make the High Court's order obscure. Judicial orders are to be certain in the meaning so that subordinate courts or other authorities may not be in any confusion and start acting according to their own choice and whim. The next date of listing is neither known to the subordinate courts or to other authorities. A case may be listed in the very next week while another case may not be listed for a year and hence the subordinate courts or other authorities who are bound by the stay order will never know how long the stay order has to continue. Listing of a case in the case list has no magic in itself. Even if a case is listed on a particular day, it may not be taken up on account of a variety of reasons ; there may be no sitting of the Court on the day of listing or due to pressure of other work, the case may not be taken up for further orders. If listing alone determines the length of time during which the order has to survive, the office of the High Court will become the real arbiter and it may or may not list a case at its choice. It is for the Court to mention a clear date if it chooses to pass a time bound stay order and not for the office to shorten or to give a long rope to the operation of a stay order.

The words "till the next date of listing" are, therefore, to be interpreted in a reasonable manner and not in a manner which may lead to absurdity or create confusion. Thus, the words "till the next day of listing" are quite clear and certain in their meaning that the stay order has to continue till any subsequent order is

passed by the Court."

This Court in *Ram Abhilakh Misra v. Cane Commissioner and others* 1998 (1) ARC 526, has held that a judicial order continues until and unless the same is vacated or not extended on the case being taken up. It shall not lapse automatically on its own when though the matter is listed in the cause list but is not taken up by the Court due to lack of time. In *Cold Storage Association, U. P. having its office at Fazalganj, Kanpur v. State of Uttar Pradesh and others* 1992 AWC (Suppl.) 43, it has been held in paragraph 12 as below :

"..... The interim stay order dated 23.6.1992, which was a time bound order, exhausted on 17th August, 1992" in the absence of any extension. Under these circumstances, what this Court is seized of presently, is the final disposal of the application for interim relief on merits. Even if it may be assumed that the interim order dated 23.6.1992 stood automatically vacated on 7th August, 1992 on account of non-disposal of the stay vacation application dated 24.7.1992, there is no reason to hold that the interim relief application itself stood exhausted. The same is available for disposal on merits."

7. The law thus appears to be settled, so far this Court is concerned, that time bound stay orders do not cease to be effective by efflux of time. The result in law is that a time bound order has the same effect as an order till further orders of the Court. In other words, it continues to operate till it is recalled, vacated or modified. The rules also do not provide for time bound stay orders. Yet the confusion prevails and every day, large numbers of applications are filed for extension of such orders consuming lot of Court's time. In the circumstances it has become necessary not only to dispose of this application but also to issue following directions to the office :

(1) The request for extension of interim order is disposed of by saying that no order is necessary as the time bound interim orders do not exhaust after expiry of time mentioned in the order.

(2) The Registrar General of the Court is directed to issue necessary directions to the office within one week that in view of the decisions of this Court the applications for extension of time bound Interim orders need not be listed. But if the petitioner applies for question-answer form, the office to find out whether his application was pending and interim order was continuing even after expiry of time mentioned in the order the answer be given by the office in the affirmative.