

CASE NO.:
Appeal (civil) 4058 of 2006

PETITIONER:
State of Gujarat & Ors.

RESPONDENT:
Dilipbhai Shaligram Patil

DATE OF JUDGMENT: 11/09/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (C) No. 7782 of 2005)

ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a Division Bench of the Gujarat High Court allowing the appeal filed by the respondent. Detailed reference to the factual aspect is unnecessary because the High Court's order on the face of it is unsustainable. Respondent filed the writ petition questioning the order of discharge passed by the Superintendent of Police, Western Railway, Vadodara by order dated 23.11.1993. Civil Special Application 1346 was filed by the respondent on 30.11.1993. On the said date notice was issued on the application and was made returnable on 10.12.1993. Reply was filed by the appellant-State on 16.12.1993. On 11.1.1994 an interim order was passed directing reinstatement of the respondent pending disposal of the petition. Finally the writ petition was dismissed by order dated 31.3.2004. It was clearly indicated in the order that the interim reliefs stood vacated. Subsequently, the review application was filed which was dismissed on 13.9.2004. Respondent filed Letters Patent Appeal 2475 of 2004 which was allowed. The High Court's conclusions inter alia are as follows:

"Having heard learned counsel for the parties and having carefully perused the speaking order of admission and interim order dated 11.1.1994 passed by S.M. Soni, J. (as he then was), this petition was required to be allowed. In fact, by an interim order, the learned Single Judge has been particularly allowed the writ petition."

Learned counsel for the appellants submitted that the High Court's view is clearly untenable and interim order passed loses effect after final disposal of the writ petition. Merely because an interim order had been passed earlier that High Court could not have concluded that by the interim order learned Single Judge had allowed the writ petition. In fact, in the present case learned Single Judge while dismissing the writ petition clearly noted that the interim reliefs stood vacated because of the dismissal of the writ petition.

Learned counsel for the respondent supported the order of the High Court.

It is well settled that an order granting pending disposal of the writ petition/suit or other proceedings, comes to an end with the disposal of the substantive proceedings and that it is the duty of the Court in such a case to put the parties in the same position, they would have been but for the interim orders of the Court. Any other view would result in the act or order of the court prejudicing the party for no fault of his and would also mean rewarding writ petitioner in spite of his failure. Any such unjust consequence cannot be countenanced by the courts. [(See Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board and Ors. 1997 (5) SCC 772)].

The position was also highlighted in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992 (3) SCC 1). It was inter alia noted as follows:-

"While considering the effect of an interim order staying the operation of the order under-challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. "

(underlines for emphasis)

Merely because an interim order had been passed pursuant to which reinstatement had been done, that cannot be a ground for allowing relief. (See Union of India v. Narender Singh (2005 (6) SCC 106).

The position was also noted in Union of India v. G.R. Prabhavalkar and Ors. (1973 (4) SCC 183) as follows:

"Mr. Singhvi, learned Counsel, then referred us to the fact that after the judgment of the High Court the State Government has passed an order on March 19, 1971, the effect of which is to equate the Sales Tax Officers of the erstwhile Madhya Pradesh State with the Sales Tax Officers, Grade in, of Bombay. This order, in our opinion, has been passed by the State Government only to comply with the directions given by the High Court. It was made during a period when the appeal against the judgment was pending in this Court. The fact that the State Government took steps to comply with the directions of the High Court cannot lead to the inference that the appeal by the Union of India has become infructuous."

The order of the High Court cannot be maintained and is set aside. Since the High Court has not dealt with the matter on merits, we remit the matter to the High Court for fresh consideration on merits.

The appeal is allowed to the aforesaid extent without any order as to costs.

JUDIS