

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision : August 31, 2015*

+ **LPA 81/2015**

ROTARY CLUB DELHI Appellant
Represented by: Ms.Madhulika Sharma, Adv.

Versus

UNION OF INDIA & ORS Respondent
Represented by: Mr.Sanjeev Narula, Adv. for
UI/R-1.
Ms.Aayushi Gupta for
Mr.Raman Duggal, Adv. for
R-2/GNCTD.
Mr.Arvind Nayar, Ms.Nanda
Devi Deka, Advs.for R-3 to 8,
and R-10.

+ **LPA 155/2015**

FAMILY PLANNING ASSOCIATION OF INDIA Appellant
Represented by: Mr.Sidharth Dias, Adv.

versus

DR (MS) MANGALA KHATTAR & ORS Respondent
Represented by: Ms.Aayushi Gupta for
Mr.Raman Duggal, Adv. for
R-1/GNCTD.
Mr.Bhagwan Swarup Shukla,
CGSC for UI/R-2.

+ **LPA 169/2015**

ANDHRA VANITA MANDALI Appellant
Represented by: Mr.Sidharth Dias,
Mr.Charanjeet Singh, Advs.

versus

UNION OF INDIA & ORS

Represented by:

..... Respondent
Mr.Vikram Jeitly, CGSC for
UOI/R-1.
Ms.Aayushi Gupta for
Mr.Raman Duggal, Adv. for
R-2/GNCTD.
Mr.Arvind Nayar, Ms. Nanda
Devi Deka, Advs. for R-3 to 7.

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LPA 459/2015

PHD FAMILY WELFARE FOUNDATION

Represented by:

..... Appellant
Mr.Harvinder Singh, Adv.

versus

UNION OF INDIA & ORS

Represented by:

..... Respondent
Mr.Sanjeev Narula, CGSC for
UOI/R-1.
Ms.Aayushi Gupta for
Mr.Raman Duggal, Adv. for
R-2/GNCTD.
Mr.Arvind Nayar, Ms. Nanda
Devi Deka, Advs.for R-3 to 15.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. A batch of writ petitions were filed by the private respondents in the present appeals against Union of India (UOI), Government of NCT Delhi (GNCTD) and the appellants employers i.e. Rotary Club Delhi, Family Planning Association of India, Andhra Vanita Mandali and PHD Family Welfare Foundation, all Non-Government Organisations (NGO) claiming that the private respondents were appointed as Medical Officers with the

NGOs. In the writ petitions the private respondents sought quashing of the communication by virtue of which Urban Welfare Family Centres set up by the Government where the private respondents were employed were closed with immediate effect for the reason that no financial support was to be released to run the project under Grant-in-Aid scheme. The Government also informed that it had no further liability in this regard w.e.f. April 1, 2014. Thus the services of the private respondents were dispensed with. Alternate prayer of being absorbed was also made.

2. Vide the impugned common judgment dated January 08, 2015 the learned Single Judge disposed of the writ petitions observing that private respondents being work charge employees/project employees cannot claim regularization in view of the ratio of Constitution Bench judgment of Supreme Court in (2006) 4 SCC 1 Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors. The tenure of these employees was co-terminus with the work/project/post and even assuming that the NGOs were for some reason held to be 'State' the employment of the private respondents was for a particular project of the NGOs funded by the Government and once the project came to an end with effect from April 01, 2014 employees such as the private respondents cannot claim continuation of their employment in violation of the decision in Uma Devi (supra). However the learned Single Judge held in terms of decision in Dr. T. Renuka & Ors. Vs. Govt. of NCT of Delhi & Ors. (WP(C) No. 9063/2011 decided on November 27, 2013) the private respondents were entitled to all the benefits as prescribed by respondent No.2/Govt. of NCT of Delhi including salary increases in terms of the 6th Central Pay Commission till the time their employment continued

till March 31, 2014 and from which date the funding of the NGOs was stopped. It was clarified that in case the necessary dues were not cleared by respondent No.3 and to whom the respondent no.2 should grant the necessary funding for clearing of the dues and which shall be positively done within a period of six weeks from the date of order and in case of default, the private respondents were entitled to simple interest @6% per annum. It was further clarified that in case there were disputes of funding between UOI and GNCTD, these inter se disputes with respect to payment of any monetary emoluments to the private respondents will not be in any manner a reason for GNCTD not to release dues of private respondents so that they can be paid their dues in terms of the judgment.

3. The issue which arose in the writ petition was that pursuant to interim order passed in the writ petition i.e. “*no precipitative action be taken against the private respondents*” the private respondents continued to report for duty with the NGOs. Though NGOs claim that there was no work, the projects having come to an end, the private respondents claim that they continued to work. Thus the learned Single Judge passed an additional direction that in cases where the private respondents have continued to work with the NGOs pursuant to an interim order of this Court, the private respondents will be paid monetary emoluments by the NGOs taking them as a private entity from April 01, 2014 till the date of the order with the clarification that neither UOI nor the GNCTD will be required to fund the NGOs for any payment which have to be made to the private respondents for work on and after April 01, 2014 till January 08, 2015 when the impugned order was passed.

4. It is this additional direction in the impugned judgment which is challenged by the four NGOs i.e. Rotary Club Delhi, Family Planning Association of India, Andhra Vanita Mandali and PHD Family Welfare Foundation in the present appeals. The appellants before this Court i.e. four NGOs as named above contends that they have no funds of their own to pay the private respondents who continued pursuant to the directions of this Court and not by virtue of an act of the appellants. Further they are not entitled to receive any fund in this regard from either the UOI or the GNCT and hence they are not in a position to pay the emoluments with effect from April 01, 2014 till January 08, 2015 i.e. for a period of 9 months and 8 days. It is further contended that an order of the Court cannot prejudice the appellants.

5. The impugned judgment in so far as it upholds the termination of the private respondents and passes no direction for regularization has not been challenged by the private respondents or for that matter of fact by the GNCT or UOI as well in relation to the direction asking them to pay to the private respondents the emoluments as per the 6th Pay Commission till March 31, 2014.

6. Thus the only issue before this Court is whether the appellants can be saddled with the pecuniary liability of paying to the private respondents salary and other benefits from April 01, 2014 to January 08, 2015 during which period no precipitative action was directed to be taken against the private respondents. It is the case of the appellants that with effect from April 01, 2014 no work was being assigned to the private respondents as there was no work and the projects having come to an end. Thus even if the

private respondents were coming to the office and signing their attendance sheet that does not mean that they were actually working and they would be thus entitled to pay. Though it is the case of the private respondents that they continued to work however admittedly the project had come to an end on March 31, 2014 and thus there being no project to work on, the version of the private respondents is unsubstantiated. Further from the scheme as noted above private respondents were employed only for the project for which funding was granted by the GOI/ GNCTD and once the said funding was stopped there was no means for the appellants to have paid the private respondents.

7. It is trite law that an order of the Court can harm none and the same applies to the appellants as well. The Supreme Court in the decision reported as (2010) 1 SCC 417 Amarjeet Singh & Ors. Vs. Devi Ratan & Ors. noted the law laid down on the issue and held:

“17. No litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. (Vide Shiv Shankarv. U.P. SRTC [1995 Supp

(2) SCC 726 : 1995 SCC (L&S) 1018 : (1995) 30 ATC 317] , *GTC Industries Ltd. v. Union of India* [(1998) 3 SCC 376 : AIR 1998 SC 1566] and *Jaipur Municipal Corpn. v. C.L. Mishra* [(2005) 8 SCC 423] .)

18. In *Ram Krishna Verma v. State of U.P.* [(1992) 2 SCC 620 : AIR 1992 SC 1888] this Court examined the similar issue while placing reliance upon its earlier judgment in *Grindlays Bank Ltd. v. ITO* [(1980) 2 SCC 191 : 1980 SCC (Tax) 230 : AIR 1980 SC 656] and held that no person can suffer from the act of the court and in case an interim order has been passed and the petitioner takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised.

19. In *Mahadeo Savlaram Shelke v. Pune Municipal Corpn.* [(1995) 3 SCC 33] this Court observed that while granting the interim relief, the court in exercise of its discretionary power should also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would adequately compensate the defendant for the loss ensued due to the order of injunction granted in favour of the plaintiff. Even otherwise the court while exercising its equity jurisdiction in granting injunction is also competent to grant adequate compensation to mitigate the damages caused to the defendant by grant of injunction. The pecuniary award of damages is consequential to the adjudication of the dispute and the result therein is incidental to the determination of the case by the court. The court can do so in exercise of its inherent jurisdiction in doing *ex debito justitiae* mitigating the damage suffered by the defendant by the act of the court in granting injunction restraining the defendant from proceeding with the action complained of in the suit. Such a procedure is necessary as a check on abuse of the process of the court and adequately compensate the damages or injury

suffered by the defendant by act of the court at the behest of the plaintiff.

20. *In South Eastern Coalfields Ltd. v. State of M.P. [(2003) 8 SCC 648 : AIR 2003 SC 4482] this Court examined this issue in detail and held that no one shall suffer by an act of the court. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences.*

21. *The Court further held: (South Eastern Coalfields case [(2003) 8 SCC 648 : AIR 2003 SC 4482] , SCC pp. 664-65, para 28)*

“28. ... Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out

of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated....”

22. *Similarly, in Karnataka Rare Earth v. Deptt. of Mines & Geology [(2004) 2 SCC 783] a similar view has been reiterated by this Court observing that the party which succeeds ultimately is to be placed in the same position in which it would have been if the court would not have passed an interim order.*

23. *In A.R. Sircar (Dr.) v. State of U.P. [1993 Supp (2) SCC 734 : 1993 SCC (L&S) 896 : (1993) 24 ATC 832] a dispute arose regarding the seniority of direct recruits and promotees on the post of Professor of Medicine in a medical college. The appellant therein faced the selection process for direct appointment along with the respondents who had been working on the said post on ad hoc basis. The appellant was duly selected, however, the private respondents could not succeed. The respondents filed the writ petition before the High Court and precluded the appointment of the appellant pursuant to his selection, by obtaining an interim order and on the other hand they got their ad hoc promotion to the post regularised under the Rules. The appellant could succeed in obtaining the appointment only after dismissal of the writ petition against him after several years of his selection. This Court held that in addition to the relief under the statutory provisions the appellant was entitled in equity to get the seniority over the respondents as they succeeded in precluding his appointment to the post by obtaining an interim order in a case having no merits whatsoever.*

24. *In Arya Nagar Inter College v. Sree Kumar Tiwary [(1997) 4 SCC 388 : 1997 SCC (L&S) 967 : AIR 1997 SC 3071] the services of the respondent therein were terminated, however, he continued to be in service on the basis of an interim order passed by the High Court in the writ petition filed by him. During the pendency of the writ petition,*

the rules for regularisation of ad hoc appointees were amended and in pursuance thereof his services also stood regularised. Ultimately, the writ petition filed by the respondent was dismissed. This Court held that his continuity in service and regularisation had to be understood as it was subject to the result of the writ petition. As the writ petition was dismissed the order regularising his services, passed during the pendency of the writ petition, became inoperative.”

8. In view of the discussion aforesaid, the additional direction of the learned Single Judge in the impugned order dated January 08, 2015 as noted below is set aside;

“An additional direction is however given in these cases that since petitioners have continued to work with the respondent No.3 pursuant to an interim order of this Court, petitioners till today will be paid all monetary emoluments by the respondent No.3 taking respondent No.3 as a private entity from 1.4.2014 till date and with the clarification that neither respondent No.1 nor respondent No.2 i.e. Union of India or Govt. of NCT of Delhi will be required to fund the respondent No.3 for any payments which have to be made to the petitioners for working on and after 1.4.2014 till today.”

9. No cost.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

AUGUST 31, 2015
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