

WMP Nos.19342 & 19348 of 2019
in WP Nos.19816 & 19822 of 2019

S.MANIKUMAR, J.,
AND
SUBRAMONIUM PRASAD, J.,

[Order of the Court was made by S.MANIKUMAR, J.,]

In WP No.19816 of 2019, petitioner has sought for a writ of declaration, declaring that the restriction cast by the impugned provisions Section 3(1) of the Broadcasting Act, limiting the mediums of broadcasting through which the Respondent No.4 can transmit the live broadcasting signals of the sporting events of national importance as shared with it to only the Respondent No.4's terrestrial networks and DTH networks, is null and void and unconstitutional; and consequently, declaring that the Respondent No.4 has the right to retransmit the live broadcasting signals of the sporting events of national importance, as share with it by the content rights owners / holders as well as the broadcasting service providers, on any of the mediums available on free-to-air basis to the benefit of the citizens of India including but not limited to the Respondent No.4's OTT platform as well as other third party platforms which retransmit the content on a free-to-air basis.

2. In WP No.19822 of 2019, petitioner has sought for a writ of declaration, declaring that the restriction cast by the impugned provisions

Section 3(1) Sports Broadcasting Act, limiting the obligation of the content right owner or holder as well as television / radio broadcasting service provider to only share the live broadcasting signals of the sporting events of national importance with the Respondent No.4 in the event of a live television broadcast on any cable or DTH network or radio commentary broadcast in India, to the exclusion of a live broadcast through any other medium (including but not limited to the internet, OTT platforms and other third party platforms that retransmit Doordarshan channels on a free-to-air basis), is null and void and unconstitutional and consequently, directing the respondents to undertake any and all requisite measures towards ensuring that all the citizens / viewers of India have the right to access and enjoy the live broadcasting of the sporting events of national importance, through all mediums available on free-to-air basis, in the present and future.

3. Pending disposal of the writ petitions, petitioner in WP No.19816 of 2019, has filed WMP Nos.19342 & 19346 of 2019 for the following reliefs

WMP No.19342 of 2019: to stay of operation of the restriction cast by the impugned provisions of Section 3(1) of the Sports Broadcasting Act, limiting the mediums of broadcasting onto which the Respondent No.4 can retransmit the live broadcasting signals of the sporting events of national importance as shared with it only the Respondent No.4s territorial networks and DTH networks.

WMP No.19348 of 2019: to grant an order of stay of operation of the restriction cast by the impugned provisions of Section 3(1) of the Sports Broadcasting Act, limiting the kind of broadcasting service providers that require to comply with the Impugned provisions to only those content rights owners / holders as well as the television / radio broadcasting service providers who are desirous of carrying a live television broadcast on any cable or DTH network or radio commentary broadcast in India.

4. Sports Broadcasting Act, is in force since 2007. In exercise of the powers conferred under the said Act, permission/licence would have been granted for telecasting sports events and rights would have been conferred, under the Permission / License, as the case may be.

5. Though, Mr.Karthik Seshadri, learned counsel for the petitioner insisted for grant of interim orders or to issue notice in the stay petitions, at this length of time and more particularly, when permission/licence had already been granted, for telecasting sports events of national importance, granting of stay would adversely affect them. That apart, presumption is in favour of the constitutionality of Section 3(1) of the Sports Broadcasting Act, 2007, impugned in the instant writ petitions, which is in force from 2007 onwards.

6. When there is presumption in favour of constitutionality, Court should not grant any interim orders. Moreover, granting of any interim order at this juncture, as stated supra, not only affects others, but would also amount to granting the main relief itself. Few decisions on the above preposition are extracted hereunder:-

(i) A Full Bench of the Hon'ble Supreme Court in **Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar** reported in **AIR 1958 SC 538 = 1959 SCR 279**, has carved out the principles as follows:

"(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest ;

(e) that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing

conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

(ii) In **Mohd. Hanif Quareshi v. The State of Bihar** reported in **1958**

AIR 731, the Hon'ble Supreme Court observed as follows :-

"The pronouncements of this Court further establish, amongst other things, that there is always a presumption in favour of the constitutionality of an enactment and that the burden is upon him, who attacks it, to show that there has been a clear violation of the constitutional principles. The courts, it is accepted, must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest and finally that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

(iii) In **Mahant Moti Das v. S.P.Sahi**, the Special Officer In Charge of Hindu Religious Trust & Ors. reported in AIR 1959 SC 942, the Hon'ble Supreme Court, held as follows:

"The decisions of this Court further establish that there is a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional guarantee; that it must be presumed that the legislature understands and correctly appreciates the needs of its own people and that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds; and further that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest....."

(iv) In **State of Uttar Pradesh v. Kartar Singh** reported in AIR 1964 SC 1135, the Constitution Bench of the Hon'ble Supreme Court held that where a party seeks to impeach the validity of a rule on the ground of such rule offending Article 14, the burden is on him to plead and prove infirmity.

This Court said :

"....., if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any apriori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his

allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art.

14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming... .."

(v) In **A.C. Aggarwal, Sub-Divisional Magistrate, Delhi v. Mst. Ram Kali** reported in **AIR 1968 SC 1**, the Constitution Bench of the Hon'ble Supreme Court reiterated the legal position thus :

".....The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, and its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds."

(vi) In **Pathumma and others v. State of Kerala** reported in **AIR 1978**

SC 771 = 1978 SCR (2) 537, a Constitutional Bench of the Hon'ble Supreme Court held as follows:

"It is obvious that the legislature is in the best position to understand and appreciate the needs of the people as enjoined by the Constitution to bring about social reforms for the upliftment of the backward and the weak or sections of the society and for the improvement of the lot of poor people. The Court will therefore, interfere in this process only when the statute is clearly violative of the right conferred on the citizen under Part III of the Constitution or when the Act is beyond the legislative competence of the legislature or such other grounds. It is for this reason that the Courts have recognised that there is always a presumption in favour of the constitutionality of a statute and the onus to prove its invalidity lies on the party which assails the same."

(vii) In **M.L.Kamra v. Chairman-Cum-Managing Director, New India Assurance Co. Ltd.**, reported in **1992 AIR 1072 : 1992 SCR (1) 220**, the Hon'ble Supreme Court held as follows:

"It is settled law that there is a presumption of constitutionality of the rule. The court ought not to interpret the statutory provisions, unless compelled by their language, in such a manner as would involve its unconstitutionality, Since the legislature of the rule making authority is presumed to enact a law which does not contravene or violate the constitutional provisions. Therefore, there is a

presumption in favour of constitutionality of a legislation or statutory rule unless ex facie it violates the fundamental rights guaranteed under Part III of the constitution."

(viii) In **Peoples Union for Civil Liberties v. Union of India** reported in **2004 (2) SCC 476**, the Hon'ble Supreme Court held that a statute carries with it a presumption of constitutionality and such a presumption extends also to a law which has been enacted for imposing reasonable restrictions in the fundamental right. It is further held that a further presumption may also be drawn that the statutory authority would not exercise the power arbitrarily.

(ix) In **Karnataka Bank Limited v. State of Andhra Pradesh** reported in **(2008) 2 SCC 254**, the Hon'ble Supreme Court held as follows:

"19. The rules that guide the constitutional courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; "to doubt the constitutionality of a law is to resolve it in favour of its validity". Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the

court is not concerned with the wisdom or unwisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it. (See *State of Bombay v. F.N.Balsara* [AIR 1951 SC 318])”

(x) In **Government Of Andhra Pradesh & Ors vs Smt.P.Laxmi Devi** reported in **2008 (4) SCC 720**, the Hon'ble Supreme Court has considered few decisions, on the presumption in favour of the constitutionality, as follows:

"58. The U.S. Supreme Court enunciated the principle that there is a presumption in favour of the constitutionality of Statute, and the burden is always upon the person who attacks it to show that there has been a clear transgression of a constitutional provision. This view was adopted by the Constitution Bench of this Court in **Charanjit Lal Chowdhury v. Union of India and others** [AIR 1951 SC 41 (para 10)], which observed:

"Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and while examining it, two principles have to be borne in mind :

(1) that a law may be constitutional even through it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(2) that it is the accepted doctrine of the American

Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in **Middleton vs. Texas Power and L. Company**, (248 U.S. 152 and 157), in which the relevant passage runs as follows :

It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by expression and that its discriminations are based upon adequate grounds." and this view has been consistently followed thereafter.

59. Thus in **M/s. B.R. Enterprises vs. State of U.P. and others** AIR 1999 SC 1867 this Court observed :

"Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment, vide **Charanjit Lal Chaowdhury v. Union of India**, 1950 SCR 869: AIR 1951 SC 41); **State of Bombay v. F.N.Bulsara**, 1951 SCR 682: (AIR 1951 SC 318), **Mahant Moti Das v. S.P.Sahi** (AIR 1959 SC 942)".

The following passage in Seervai, Constitutional Law of India (3rd Edn.) page 119 found approval in **Delhi Transport Corporation v. D.T.C.Mazdoor Congress**, 1991 (Supp) 1 SCC

600 : (AIR 1991 SC 101). The Court held:

"Seervai in his book Constitutional Law of India (3rd Edn) has stated at page 119 that:

"the courts are guided by the following rules in discharging their solemn duty to declare laws passed by a legislature unconstitutional:

1) There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; 'to doubt the constitutionality of a law is to resolve it in favour of its validity'.

2) A statute cannot be declared unconstitutional merely because in the opinion of the court it violates one or more of the principles of liberty, of the spirit of the Constitution, unless such principles and that spirit are found in the terms of the Constitution" (emphasis supplied)

60. Similarly in **Union of India v. Elphinstone Spinning and Weaving Co. Ltd.**, and another, AIR 2001 SC 724 (vide para 9) a Constitution Bench of this Court observed :

"There is always a presumption that the legislature does not exceed its jurisdiction and the burden of establishing that the legislature has transgressed constitutional mandates such as, those relating to fundamental rights is always on the person who challenges its vires. Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution it must be allowed to stand as the true expression of the national will **Shell Company of Australia vs. Federal Commissioner of Taxation**, 1931 AC 275 (Privy Council). The aforesaid

principle, however, is subject to one exception that if a citizen is able to establish that the legislation has invaded his fundamental rights then the State must justify that the law is saved. It is also a cardinal rule of construction that if one construction being given the statute will become ultra vires the powers of the legislature whereas on another construction which may be open, the statute remains effective and operative, then the Court will prefer the latter, on the ground that the legislature is presumed not to have intended an excess of jurisdiction". (emphasis supplied)

61. In **State of Bihar and others v. Bihar Distillery Ltd.**, AIR 1997 SC 1511 (vide para 18) a Constitution Bench of this Court observed :

"The approach of the Court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The Court should try to sustain its validity to the extent possible. It should strike down the enactment only when it is not possible to sustain it. The Court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed. Indeed, any such defects of drafting should be ironed out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, an Act made by the Legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void."

62. The same view has been taken by the Constitution Bench of this Court in **Hamdard Dawakhana and another v. Union of India**, AIR 1960 SC 554 (vide para 9) which observed:

"Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people, that the laws it enacts are directed to problems which are made manifest by experience, and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. **Charanjit Lal v. Union of India**, 1950 SCR 869: (AIR 1951 SC 41); **State of Bombay v. F.N.Baulsara**, 1951 SCR 682 at p.708; (AIR 1951 SC 318 at p. 326); AIR 1959 SC 942."

(xi) In **Namit Sharma vs Union Of India** reported in 2013 (1) SCC 745, the Hon'ble Supreme Court, held as follows:

"46. To examine constitutionality of a statute in its correct perspective, we have to bear in mind certain fundamental principles as afore-recorded. There is presumption of constitutionality in favour of legislation. The Legislature has the power to carve out a classification which is based upon intelligible differentia and has rational nexus to the object of the Act. The burden to prove that the enacted law offends any of the Articles under Part III of the Constitution is on the one who questions the constitutionality and shows that despite such presumption in favour of the legislation, it is unfair, unjust and unreasonable."

7. On the aspect of granting interim order, the Hon'ble Supreme

<http://www.judis.nic.in> Court, has laid down certain guidelines as hereunder:-

(i) After giving due consideration to the judgments made in Samarias Tranding Co.Pvt. Ltd. Vs. S.Samuel, reported in (1984) 4 SCC 6; Siliguri Municipality vs. Amalendu Das, reported in (1984) 2 SCC 436; Titaghur Paper Mills Co. Ltd. vs. State of Orissa, reported in (1983) 2 SCC 433; Union of India vs. Oswal Woollen Mills Ltd, reported in (1984) 2 SCC 646 and on the facts and circumstances of the case, in *Asstt. Collector, C.Excise vs. Dunlop India Ltd.*, reported in (1985) 1 SCC 260, at Paragraph Nos.5 to 7, the Hon'ble Supreme Court, held thus:-

"5. We repeat and deprecate the practice of granting interim order which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other relevant considerations.

In Union of India v. Jain Shudh Vanaspati Ltd. [C.A. No. 11450 of 1983] Chandrachud, C.J., A.P. Sen, R.N. Misra, JJ. allowed an appeal against an interim order making the observations:

"After hearing learned counsel for the rival parties, we are of the opinion that the interim order passed by the High Court on November 29, 1983 is not warranted since it virtually grants to the respondents a substantial part of the relief claimed by them in their writ petition. Accordingly, we set aside the said order."

revenue has been seriously jeopardised and budgets of Governments and Local Authorities affirmatively prejudiced to the point of precariousness consequent upon interim orders made by courts. In fact, instances have come to our knowledge where Governments have been forced to explore further sources for raising revenue, sources which they would rather well leave alone in the public interest, because of the stays granted by courts. We have come across cases where an entire Service is left in a state of flutter and unrest because of interim orders passed by courts, leaving the work they are supposed to do in a state of suspended animation. We have come across cases where buses and lorries are being run under orders of court though they were either denied permits or their permits had been cancelled or suspended by Transport Authorities. We have come across cases where liquor shops are being run under interim orders of court. We have come across cases where the collection of monthly rentals payable by excise contractors has been stayed with the result that at the end of the year the contractor has paid nothing but made his profits from the shop and walked out. We have come across cases where dealers in food grains and essential commodities have been allowed to take back the stocks seized from them as if to permit them to continue to indulge in the very practices which were to be prevented by the seizure. We have come across cases where land reform and important welfare legislations have been stayed by courts. Incalculable harm has been done by such interim orders. All this is not to say that interim orders may never be made against public authorities. There are, of course, cases which demand that interim orders should be made in the interests 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 a 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 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. 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 facie case. There is the question of balance of convenience. There is the question of irreparable injury. There is the question of the public interest. There are many such factors worthy of consideration. We often wonder why in the case indirect taxation where the burden has already been passed on to the consumer, any interim relief should at all be given to the manufacturer, dealer and the like !

6. There is just one more thing that we wish to say. In *Siliguri Municipality v. Amalendu Das* [(1984) 2 SCC 436 : 1984 SCC (Tax) 133], the Court was put to the necessity of pointing out the following: [SCC para 4, pp. 438-39 : SCC (Tax) pp. 135-

36]

“We will be failing in our duty if we do not advert to a feature which causes us dismay and distress. On a previous occasion, a Division Bench had vacated an interim order passed by a learned Single Judge on similar facts in a similar situation. Even so when a similar matter giving rise to the present appeal came up again, the same learned Judge whose order had been reversed earlier, granted a non-speaking interlocutory order of the aforesaid nature. This order was in turn confirmed by a Division Bench without a speaking order articulating reasons for granting a stay when the earlier Bench had vacated the stay. We mean no disrespect to the High Court in emphasizing the necessity for self-imposed discipline in such matters in obedience to such weighty institutional considerations like the need to maintain decorum and comity. So also we mean no disrespect to the High Court in stressing the need for self-discipline on the part of the High Court in passing interim orders without entering into the question of amplitude and width of the powers of the High Court to grant interim relief. The main purpose of passing an interim order is to evolve a workable formula or a workable arrangement to the extent called for by the demands of the situation keeping in mind the presumption regarding the constitutionality of the legislation and the vulnerability of the challenge, only in order that no irreparable injury is occasioned. The Court has therefore to strike a delicate balance after considering the pros and cons of the matter lest larger public interest is not jeopardized and institutional embarrassment is eschewed.”

We desire to add and as was said in *Cassell & Co. Ltd. v. Broome* [1972 AC 1027 : (1972) 1 All ER 801 : (1972) 2 WLR 645

(HL)] we hope it will never be necessary for us to say so again that “in the hierarchical system of courts” which exists in our country, “it is necessary for each lower tier”, including the High Court, “to accept loyally the decisions of the higher tiers”. “It is inevitable in hierarchical system of courts that there are decisions of the Supreme Appellate Tribunal which do not attract the unanimous approval of all members of the judiciary.... But the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted.” [Ibid see observations of Lord Hailsham and Lord Diplock] The better wisdom of the court below must yield to the higher wisdom of the court above. That is the strength of the hierarchical judicial system. In *Cassell & Co. Ltd. v. Broome* [1972 AC 1027 : (1972) 1 All ER 801 : (1972) 2 WLR 645 (HL)] commenting on the Court of Appeal's comment that *Rookes v. Barnard* [1964 AC 1129 : (1964) 1 All ER 367 : (1964) 2 WLR 269 (HL)] was rendered per incuriam. Lord Diplock observed:

“The Court of Appeal found themselves able to disregard the decision of this House in *Rookes v. Barnard* [1964 AC 1129 : (1964) 1 All ER 367 : (1964) 2 WLR 269 (HL)] by applying to it the label per incuriam. That label is relevant only to the right of an appellate court to decline to follow one of its own previous decisions, not to its right to disregard a decision of a higher appellate court or to the right of a Judge of the High Court to disregard a decision of the Court of Appeal.”

It is needless to add that in India under Article 141 of the Constitution the law declared by the Supreme Court shall be binding on all courts within the territory of India and under

Article 144 all authorities, civil and judicial in the territory of India shall act in aid of the Supreme Court.

(ii) In ***Bank of Maharashtra vs. Race Shipping & Transport Co.Pvt.Ltd., and another***, reported in **(1995) 3 SCC 257**, the Hon'ble Supreme Court, at paragraph Nos.9 to 12, held thus:-

"9. Since the writ petition is still pending in the High Court and the question of maintainability of the writ petition has yet to be considered we do not propose to go into the said question. All that we wish to say at this stage is that the objections that have been raised by the appellant-Bank against the maintainability of the writ petition are not such that they may be disregarded as lacking in substance. This is a factor which has a bearing on the exercise of discretion by the court while passing the interim order in the writ petition.

10. By the interim order the High Court has directed the appellant-Bank to credit a sum of Rs 95,000 in the Current Account No. 318 of Respondent 1. The High Court has recorded that respondent through their counsel had given an undertaking to bring back the amount if the Court so desires. The said interim order, in substance, grants the relief which the respondent would have been given at the final stage in the event of their writ petition being allowed by the High Court.

11. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, the public

interest and a host of other considerations. [See : Asstt. CCE v. Dunlop India Ltd. [(1985) 1 SCC 260, 265 : 1985 SCC (Tax) 75] ; State of Rajasthan v. Swaika Properties [(1985) 3 SCC 217, 224]

12. In the instant case since there is serious dispute on facts it cannot even be said that a prima facie case had been made out for grant of an interim order in favour of the respondents which enables them to have the reimbursement of the sum of Rs 95,000 that was debited to their account in view of the encashment of the cheque in question. We are of the view that this was not a case in which the High Court while admitting the writ petition should have passed an interim order giving such a direction. In the circumstances we are unable to uphold the said interim order passed by the High Court."

(iii) In ***Bombay Dyeing and Manufacturing Co. Ltd. vs. Bombay Environmental Action Group and others***, reported in (2005) 5 SCC 61, the Hon'ble Apex Court, at paragraph Nos.22 to 24, held thus:-

"22. This Court at this stage is concerned with an interim order passed by the High Court. The writ petition is still to be heard. Affidavits between the parties are yet to be exchanged. The objection as regards maintainability of the writ petition is also required to be finally determined by the High Court itself. This Court at this stage cannot, thus, enter into all the contentious questions raised in these appeals. But, there cannot be doubt or dispute whatsoever that before an interim order is passed and in particular in a public interest litigation, the court must consider the question as regards

existence of a prima facie case, balance of convenience as also the question as to whether the writ petitioners shall suffer an irreparable injury, if the injunction sought for is refused. The courts normally do not pass an interlocutory order which would affect a person without giving an opportunity of hearing to him. Only in extreme cases, an ad interim order can be passed but even therefor, the following parameters as laid down by this Court in *Morgan Stanley Mutual Fund v. Kartick Das* [(1994) 4 SCC 225] are required to be complied with: (SCC pp. 241-42, para 36)

“36. As a principle, ex parte injunction could be granted only under exceptional circumstances. The factors which should weigh with the court in the grant of ex parte 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 some time 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."

(See also *Andhra Bank v. Official Liquidator* [(2005) 5 SCC 75 : (2005) 3 Scale 178] .)

23. The courts while passing an order of interim injunction must also consider the parameters of a public interest litigation as laid down by this Court in *B. Singh (Dr.) v. Union of India* [(2004) 3 SCC 363] and *Dattaraj Nathuji Thaware v. State of Maharashtra* [(2005) 1 SCC 590] .

24. The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed."

(iv) In *Zenit Mataplast Private Limited vs. State of Maharashtra*

and others, reported in (2009) 10 SCC 388, the Hon'ble Supreme Court, at

paragraph Nos.29 to 37, held thus:-

"29. In a case like this, when the applicant approaches the court complaining against the statutory authority alleging arbitrariness, bias or favouritism, the court, being custodian of law, must examine the averments made in the application to form a tentative opinion as to whether there is any substance in those allegations. Such a course is also required to be followed while deciding the application for interim relief.

30. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial (vide Anand Prasad Agarwalla v. Tarkeshwar Prasad (2001) 5 SCC 568] , and State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha [(2009) 5 SCC 694 : (2009) 2 SCC (L&S) 109]

31. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no straitjacket formula can be laid down. There may be a situation wherein the respondent-defendant may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide M. Gurudas v. Rasaranjan [(2006) 8

SCC 367 : AIR 2006 SC 3275] and Shridevi v. Muralidhar [(2007) 14 SCC 721]). Grant of temporary injunction is governed by three basic principles i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini-trial at the stage of grant of temporary injunction [vide S.M. Dyechem Ltd. v. Cadbury (India) Ltd. [(2000) 5 SCC 573 : AIR 2000 SC 2114] and Anand Prasad Agarwalla [(2001) 5 SCC 568] , SCC p. 570, para 6].

32. In Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd. [(1999) 7 SCC 1 : AIR 1999 SC 3105] this Court observed that the other considerations which ought to weigh with the court hearing the application or petition for the grant of injunctions are as below: (SCC p. 14, para 24)

- “24. (i) extent of damages being an adequate remedy;
- (ii) protect the plaintiff's interest for violation of his rights though, however, having regard to the injury that may be suffered by the defendants by reason thereof;
- (iii) the court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the other's;
- (iv) no fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case—the relief being kept flexible;
- (v) the issue is to be looked at from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;
 (vii) whether the grant or refusal of injunction will adversely affect the interest of the general public which can or cannot be compensated otherwise.”

33. In *Dalpat Kumar v. Prahlad Singh* [(1992) 1 SCC 719 : AIR 1993 SC 276] the Supreme Court explained the scope of the aforesaid material circumstances, but observed as under: (SCC p. 722, para 6)

“6. ... The phrases ‘prima facie case’, ‘balance of convenience’ and ‘irreparable loss’ are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by men's ingenuity in given facts and circumstances, but always is hedged with sound exercise of judicial discretion to meet the ends of justice. The facts are eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience.”

34. This Court in *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal* [AIR 1962 SC 527] held that the civil court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39, Code of Civil Procedure.

35. In *Deoraj v. State of Maharashtra* [(2004) 4 SCC 697 : AIR 2004 SC 1975] this Court considered a case where the courts below had refused the grant of interim relief. While dealing with the appeal, the Court observed that ordinarily in exercise of its jurisdiction under Article 136 of the Constitution, this Court does not interfere with the orders of

interim nature passed by the High Court. However, this rule of discretion followed in practice is by way of just self-imposed restriction. An irreparable injury which forcibly tilts the balance in favour of the applicant, may persuade the Court even to grant an interim relief though it may amount to granting the final relief itself. The Court held as under: (SCC p. 703, para 12)

“12. ... The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice.”

Such a course is permissible when the case of the applicant is based on his fundamental rights guaranteed by the Constitution of India. (vide All India Anna Dravida Munnetra Kazhagam v. Govt. of T.N. [(2009) 5 SCC 452])

36. In *Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group* [(2005) 5 SCC 61] this Court observed as under: (SCC p. 72, para 24)

“24. The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed.”

37. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the court after

considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss."

(v) In *Deoraj vs. State of Maharashtra*, reported in (2004) 4 SCC 697, the Hon'ble Apex Court, at paragraph Nos.11 and 12, observed thus:-

"11. The courts and tribunals seized of the proceedings within their jurisdiction take a reasonable time in disposing of the same. This is on account of fair-procedure requirement which involves delay intervening between the previous and the next procedural steps leading towards preparation of case for hearing. Then, the courts are also overburdened and their hands are full. As the conclusion of hearing on merits is likely to take some time, the parties press for interim relief being granted in the interregnum. An order of interim relief may or may not be a reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature. Ordinarily, the court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the court's leaning not in favour of maintaining the status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do

cause dilemma and put the wits of any judge to test.

12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case – of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent."

8. In the light of the above discussion and decisions, we are not

<http://www.judis.nic.in> inclined to issue notice in the said writ miscellaneous petitions. Accordingly

WP Nos.19342 & 19348 of 2019 in WP No.19816 of 2019, are dismissed.

[S.M.K.,J.] [S.P., J.]
10.07.2019

ars/dm

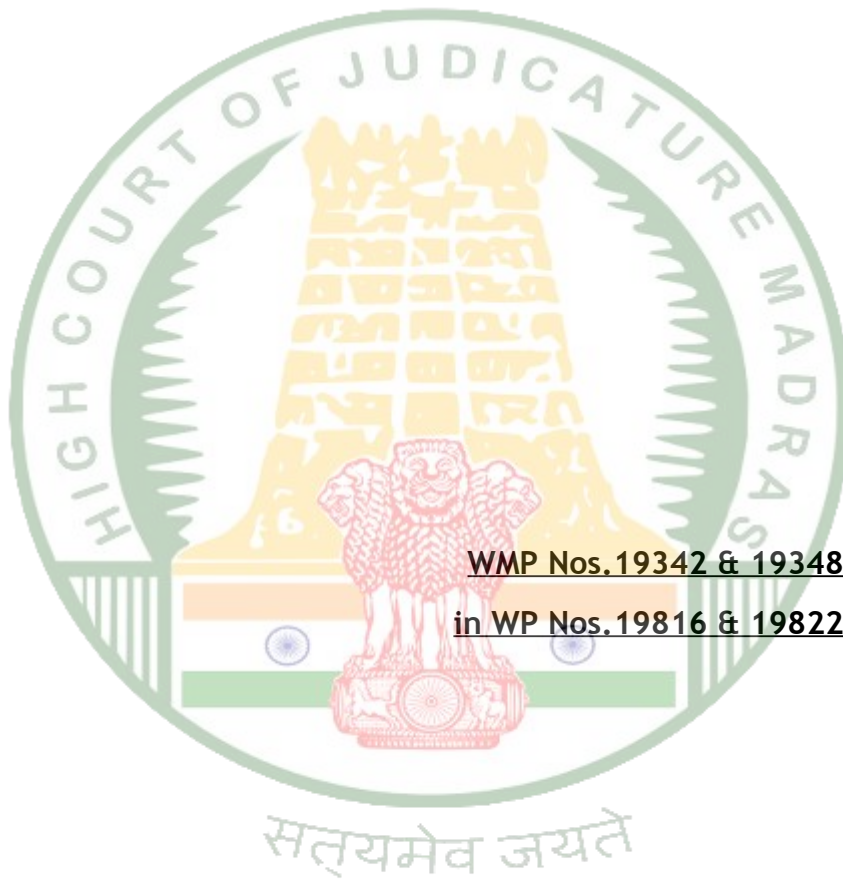
Note:
Issue order copy on 19.07.2019.



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S.MANIKUMAR, J.,
AND
SUBRAMONIUM PRASAD, J.,

ars/dm



WMP Nos.19342 & 19348 of 2019
in WP Nos.19816 & 19822 of 2019

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