

A STATE OF U.P. THR. SECRETARY AND ORS.

v.

PREM CHOPRA

(Civil Appeal No. 2417 of 2022)

B MARCH 25, 2022

[S. ABDUL NAZEER AND VIKRAM NATH, JJ.]

- Interim order: Interim order of stay – Effect of – Held: Imposition of a stay on the operation of an order means that the order which has been stayed would not be operative from the date of passing of the stay order – However, it does not mean that the stayed order is wiped out from the existence, unless it is quashed – Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order and interim order comes to an end – In such a situation, it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay or final order dis-missing the proceedings specifies otherwise – On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order would have to pay interest on the amount withheld or not paid by virtue of the interim order – On facts, as regards the liability of the respondent to pay interest for the period during which recovery of license fee was stayed by the High Court and eventually the writ petition was dismissed, the High Court erred in holding that the respondent was not liable to pay interest on arrears of excise revenue due to the protection given under the interim order – Thus, the order passed by the High Court set aside –U.P. Excise Act, 1910 – U.P. Excise (Settlement of License for Retail Sale of Country Liquor) Rules, 2002.*

G *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI CINOD Secretariat, Madras (1992) 3 SCC 1 : [1992] (2) SCR 999; Kanoria Chemicals and Industries Ltd. and Others v. U.P. State Electricity Board and Others (1997) 5 SCC 772 : [1997] (2) SCR 844; Rajasthan Housing Board and Others v. Krishna Kumari (2005) 13 SCC 151; South Eastern*

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Coalfields Ltd. V. State of M.P. and Others (2003) 8 SCC 648 : [2003] (4) Suppl. SCR 651; Nava Bharat Ferro Alloys Limited v. Transmission Corporation of Andhra Pradesh Limited and Another (2011) 1 SCC 216 : [2010] (14) SCR 900; State of Rajasthan and Another v. J.K. Synthetics Limited and Another (2011) 12 SCC 518 : [2011] (10) SCR 993 – referred to. A

12 SCC 518 : [2011] (10) SCR 993 – referred to. B

Case Law Reference

[1992] (2) SCR 999	referred to	Para 18	
[1997] (2) SCR 844	referred to	Para 19	C
(2005) 13 SCC 151	referred to	Para 20	
[2003] (4) Suppl. SCR 651	referred to	Para 21	
[2010] (14) SCR 900	referred to	Para 22	
[2011] (10) SCR 993	referred to	Para 23	D

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2417 of 2022.

From the Judgment and Order dated 10.05.2018 of the High Court of Judicature at Allahabad, Lucknow Bench at Lucknow in Misc. Single No.2582 of 2003. E

Samar Vijay Singh, Amit Ojha, Vipin Singh Bansal, Advs. for the Appellants.

Ashok Kumar Singh, Ms. Pragya Singh, Akshay Singh, Shantwanu Singh, Advs. for the Respondent. F

The Order of the Court was passed by

S. ABDUL NAZEER, J.

(1) Leave granted.

(2) This appeal is directed against the order dated 10.05.2018 passed by the High Court of Judicature at Allahabad (Lucknow Bench) in Misc. Single No. 2582 of 2003 whereby the High Court has set aside the demand made by the appellants for a sum of Rs.10,08,210.51 towards interest on arrears of excise revenue. G

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A (3) Brief facts necessary for disposal of this case are as under:

On 14.03.2002, the Government of Uttar Pradesh declared the Excise Policy for the year 2002-03. On the basis of the Excise Policy and under the provisions of U.P. Excise (Settlement of License for Retail Sale of Country Liquor) Rules, 2002 (for short ‘the Rules’), the District

B Magistrate/Collector, Lakhimpur Kheri issued an advertisement for the settlement of the excise shops for the year 2002-03.

(4) The respondent submitted an application in the prescribed form for grant of license for the retail sale of country liquor shop, Mohammadi No.1, Lakhimpur Kheri. A license was granted to the respondents for

C the year 2002-03 (from 01.04.2002 to 31.03.2003) for an annual license fee of Rs.29,52,000/-.

(5) In the month of December 2002, the respondent submitted an application for surrendering the excise shop/license.

D (6) As per the terms and conditions of the settlement, the respondent was liable to pay license fee for the shop for the aforesaid period i.e. from 01.04.2002 to 31.03.2003. The respondent had lifted quota of Rs.20,35,212/- by the month ending 31.12.2002.

E (7) The appellants vide notice dated 06.01.2003 apprised to the respondent that the application filed by him for surrender of excise shop can be entertained only after deposit of balance of Rs.9,16,788/- towards license fee. On 25.01.2003 the appellants again issued notice to the respondent to pay the outstanding license fee amounting to Rs.9,16,788/- within a week.

F (8) The respondent preferred Writ Petition No.855 (MB) of 2003 wherein the High Court directed the respondent to file an appeal before the Additional Commissioner Excise (Licensing and Industrial Development) U.P. Accordingly, the respondent filed an appeal on 19.02.2003 before the Excise Commissioner, U.P., Allahabad.

G Subsequently on 08.03.2003, the license of the respondent was cancelled. The Excise Commissioner, while dismissing the appeal vide order dated 23.04.2003, held that under Rule 19 and Section 36 of the U.P. Excise Act, 1910 (for short, ‘the Act’), the respondent is liable to pay entire dues. The revision filed by the respondent was also dismissed by the Secretary, Excise Department by order dated 18.07.2003.

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(9) After cancellation of the license, the District Excise Officer recalculated the total amount due against the respondent and adjusted the amount of security of Rs.2,95,200/- out of total amount of Rs.9,38,762/- and found the respondent was still liable to pay Rs.6,43,562/- to the Department.

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(10) Aggrieved by the order dated 18.07.2003, the respondent filed the writ petition, Misc. Single No.2582 of 2003, before the High Court of Judicature at Allahabad (Lucknow Bench). The High Court, vide order dated 01.08.2003, stayed the said recovery proceedings subject to deposit of Rs.2,75,000/- by the respondent before the District Excise Officer.

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(11) The appellants filed counter affidavit in the writ petition on 13.02.2004. On 21.12.2015, the writ petition was dismissed by the High Court for non-prosecution. In the year 2017, the respondent deposited the remaining amount of Rs.3,68,562/- with the Department. Thus, the amount which was due in 2003 was paid in the year 2017 but the respondent failed to make payment of interest to the Department. The order dated 21.12.2015 was recalled by the High Court on 19.01.2018.

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(12) Further, on 10.01.2018, the Department issued notice to the respondent for payment of Rs.10,08,210.51 due towards interest. On 10.05.2018 the High Court passed the impugned order holding that the demand of Rs. 10,08,210.51 towards interest was not justified as the respondent was under the protection of an interim order.

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(13) Learned counsel for the appellants submits that as per the terms and conditions of the settlement, the respondent was liable to pay the license fee for the shop for the year 2002-03. He did not pay the license fee from January 2003 to March 2003. He went on challenging the demand made by the Department for payment of balance of license fee and remained unsuccessful in his challenge. Finally, he filed the writ petition before the High Court i.e. Misc. Single No.2582 of 2003 wherein an interim order was granted. On account of this order, the appellants were restrained from collecting license fee. The writ petition was dismissed for non-prosecution. The respondent had deposited the remaining license fee in the year 2017 but failed to pay the interest to the Department. It is argued that when the writ petition was dismissed, the respondent ought to have paid the interest accrued on the license fee. It is further argued that the High Court was not justified in denying interest

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- A on the ground that the appellant had the protection of an interim order granted by the court.

(14) On the other hand, learned counsel for the respondent submitted that the High Court had restrained the appellants from recovering the license fee by an interim order. The respondent has paid

- B the license fee in the year 2017. Therefore, the appellants are not justified in demanding interest for the period during which a stay on recovery of license fee was granted by the High Court.

(15) Having regard to the contentions urged, the question which falls for consideration is whether the respondent is liable to pay interest

- C for the period during which recovery of license fee under Section 36 of the Act was stayed by the High Court and eventually when the writ petition was dismissed.

(16) Section 38-A of the Act specifically provides for payment of interest on arrears of excise revenue which is as under:

- D **“38-A. Interest on arrears of excise revenue –**

(1) Where any excise revenue has not been paid within three months from the date on which it become payable, interest at such rate not exceeding twenty-four *per cent per annum*, as may be prescribed, shall be payable from the date such excise revenue becomes payable till the date of actual payment:

E Provided that until a higher rate is prescribed, the rate of interest will be eighteen *per cent per annum*.¹

- F (17) It is not disputed that the respondent was liable to pay license fee under Section 36 of the Act for the year 2002-03, even on surrender of the license. The High Court had granted an interim order restraining the appellants from recovery of the license fee for three months, subject to the respondent depositing a sum of Rs.2,75,000/- within a period of six weeks. Admittedly, the writ petition was dismissed on 21.12.2015 for G non-prosecution, which was restored later.

H (18) When the interim order was in force, the recovery of license fee was temporarily suspended. The restraint was only against the Department not to recover the license fee. There was no prohibition for the respondent to deposit the balance of license fee. It is to be stated here that the High Court has not quashed the demand of license fee

made by the appellants. There is a difference between stay of operation of an order and quashing of an order which has been explained by this Court in **Shree Chamundi Mopeds Ltd. V. Church of South India Trust Association CSI CINOD Secretariat, Madras**¹ as under:

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“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.”

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(19) Following the said decision, this Court in **Kanoria Chemicals and Industries Ltd. and Others v. U.P. State Electricity Board and Others**,² has held that an order of stay which is granted during the pendency of a writ petition/suit or other proceeding comes to an end with the dismissal of the substantive proceedings and it is the duty of the court in such cases to put the parties in the same position that they would have been in but for the interim order of the court. In that case, this Court rejected the contention that when the operation of the notification itself was stayed, no surcharge could be demanded upon the amount withheld. It was held thus:

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“11. Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, yet deprived of the late payment surcharge which was due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and

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¹(1992) 3 SCC 1

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²(1997) 5 SCC 772

- A conditions of supply — which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law.

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- B *It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding 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 a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same notification — the operation of which was stayed.”

- (20) In **Rajasthan Housing Board and Others v. Krishna Kumari**,³ this Court observed that Order 39 of the Civil Procedure Code, 1908 provides for grant of temporary injunction at the risk and responsibility of the person who obtains it and, if ultimately case is decided against such person, he would be liable to pay interest on the arrears of any amount due which had been stayed by the injunction order. The legal maxim *actus curiae neminem gravabit*, which means that an act of the Court shall prejudice no man, becomes applicable in such a case.

- (21) In **South Eastern Coalfields Ltd. V. State of M.P. and Others**,⁴ the writ petitioner therein had argued that interest accrued due to non-payment of enhanced amount of royalty was protected by a

H ³(2005) 13 SCC 151

H ⁴(2003) 8 SCC 648

judicial order of an interim nature and, therefore, merely because the writ was finally dismissed, the writ petitioner should not be held liable for payment of interest so long as money was withheld under the protective umbrella of the injunction order. This submission was rejected by this Court by holding as under:

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“The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the same. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.”

(22) In **Nav Bharat Ferro Alloys Limited v. Transmission Corporation of Andhra Pradesh Limited and Another**,⁵ the appellant therein had challenged the revised tariff rates imposed by the respondent therein and obtained an interim order of stay against collection of the

⁵(2011) 1 SCC 216

- A disputed amounts. The High Court subsequently upheld upward revision of tariff. Thereafter, the respondent therein raised a demand for additional charges/interest on outstanding amounts from the date of tariff revision and the High Court upheld such demand holding that there was no subsisting relief once the demand was upheld. This Court further held that the principle of restitution entitles the successful party to be restored back to the position it would hold had there been no order/judgment adverse to it. The appellant therein had obtained only an ad-interim order of stay against enforcement of tariffs. A party who fails in the main proceedings cannot take benefit from the interim order issued during the pendency of such proceedings. Therefore, it was held in that case that
- B the amount became recoverable from the appellant therein no sooner the judgment of the High Court was reversed and the revision of tariffs was upheld.

- (23) In **State of Rajasthan and Another v. J.K. Synthetics Limited and Another**,⁶ the interest for the period of which recovery of royalty was to be paid under Section 9(2) of the Mines and Minerals (Development and Regulation) Act, 1957 remained stayed under the interim orders of the court. However, eventually the writ petition was dismissed. This Court held that whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order. It was held thus:

- F “23. It is therefore evident that whenever there is an interim order of stay in regard to any revision in rate or tariff, unless the order granting interim stay or the final order dismissing the writ petition specifies otherwise, on the dismissal of the writ petition or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order. Where the statute or contract specifies the rate of interest, usually interest will have to be paid at such rate. Even where there is no statutory or contractual provision for payment of interest, the court will have to direct the payment of interest at a reasonable rate, by way of restitution, while vacating the order

H ⁶(2011) 12 SCC 518

of interim stay, or dismissing the writ petition, unless there are special reasons for not doing so. Any other interpretation would encourage unscrupulous debtors to file writ petitions challenging the revision in tariffs/rates and make attempts to obtain interim orders of stay. If the obligation to make restitution by paying appropriate interest on the withheld amount is not strictly enforced, the loser will end up with a financial benefit by resorting to unjust litigation and the winner will end up as the loser financially for no fault of his. Be that as it may.”

(24) From the above discussion, it is clear that imposition of a stay on the operation of an order means that the order which has been stayed would not be operative from the date of passing of the stay order. However, it does not mean that the stayed order is wiped out from the existence, unless it is quashed. Once the proceedings, wherein a stay was granted, are dismissed, any interim order granted earlier merges with the final order. In other words, the interim order comes to an end with the dismissal of the proceedings. In such a situation, it is the duty of the Court to put the parties in the same position they would have been but for the interim order of the court, unless the order granting interim stay or final order dismissing the proceedings specifies otherwise. On the dismissal of the proceedings or vacation of the interim order, the beneficiary of the interim order shall have to pay interest on the amount withheld or not paid by virtue of the interim order.

(25) Coming to the facts of the present case, the respondent was not successful in his challenge to the notice dated 06.01.2003 demanding the balance of license fee before the Authorities under the Act. Therefore, he filed the writ petition bearing Misc. Single No.2582 of 2003 before the High Court wherein the High Court, by an interim order, stayed the recovery of the monthly instalment of license fee for the months January 2003 to March 2003, subject to deposit of Rs.2,75,000/- within a period of six weeks before the District Excise Officer. It is not disputed that this amount of Rs.2,75,000/- was deposited by the respondent. The said writ petition was dismissed by the High Court for non-prosecution vide Order dated 21.12.2015. On 23.12.2017, the respondent deposited the remaining amount of Rs.3,68,562/- towards license fee. However, the respondent did not make payment of interest to the Department. The writ petition was restored on 19.01.2018. In the meantime, the appellants issued a notice calling upon the respondent to pay Rs.10,08,210.51/-

- A towards interest due. The High Court held that the respondent was not liable to pay interest as he was under the protection of the interim order. Given the settled position of law, in our view the High Court has erred in holding that the respondent was not liable to pay interest due to the protection given under the interim order.
- B (26) In the result, the appeal succeeds and it is accordingly allowed. The order of the High Court dated 10.05.2018 in Misc. Single No. 2582 of 2003 is set aside.
(27) At this stage, learned counsel for the respondent submits that the respondent may be permitted to make an application under one-time settlement scheme 2021 wherein certain concessions have been made for payment of interest dues. The submission of the learned counsel is accepted and the respondent is permitted to make an application in terms of the said scheme within a period of eight weeks from today. We make it clear that if such an application is filed by the respondent, the authority concerned is directed to consider the same in accordance with law. No costs.
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Nidhi Jain

Appeal allowed.