

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/LETTERS PATENT APPEAL NO. 1889 of 2019**

**In R/SPECIAL CIVIL APPLICATION NO. 14593 of 2019**

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**MAHESHBHAI LALBHAI PATEL**

Versus

**AGRICULTURE PRODUCE MARKET COMMITTEE**

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Appearance:

MR DIPEN DESAI(2481) for the Appellant(s) No. 1

MS JIRGA JHAVERI, AGP for the Respondent(s) No. 1,2

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**CORAM:HONOURABLE MS. JUSTICE SONIA GOKANI**

and

**HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

**Date : 27/11/2020**

**ORAL ORDER**

**(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1. This Court today passed an order in Civil Application No. 02 of 2020 in Letters Patent Appeal No. 1889 of 2019, which is as follows: -

*“1. The applicant is the original appellant who has preferred Letters Patent Appeal No. 1889 of 2019 challenging the order of the learned Single Judge dated 27.11.2019 where, the petition was admitted, however, interim relief was not granted.*

*2. In the Letters Patent Appeal, vide order dated 24.12.2019, the appeal was admitted and by way of interim order, this Court granted stay on the effect and operation of the impugned dismissal order, however, it also directed that the petitioner would be entitled to continue in the service and shall also be paid the salary duly admissible to him. Apt would be to reproduce the order dated 24.12.2019: -*

*“1. We have heard Shri Dipen Desai, learned counsel for the appellant.*

*2. ADMIT*

*Issue NOTICE.*

*3. It is submitted by Shri Dipen Desai that entire action taken by the respondent Agriculture Produce Market Committee, Hansot, District Bharuch is tainted with malafide and an outcome of the fact that the appellant had challenged not only the suspension order but also the subsequent action of the respondent Committee in not providing necessary documents during inquiry. Shri Desai has referred to certain dates, which we are reproducing hereunder:-*

*3.1. The appellant was suspended on 4.10.2018, which was assailed by way of Special Civil*

*Application No.16859 of 2018, in which notices were issued on 30.10.2018. The matter remained pending and when for more than 8 months, subsistence allowance was not paid, on civil application being filed, this Court passed order on 11.7.2019, directing the Market Committee to pay subsistence allowance. It was thereafter, that charge-sheet was issued on 30.7.2019. However, along with the charge-sheet, the documents relied upon were not provided to the appellant. As such, vide letter dated 6.8.2019, 8.8.2019 and 14.8.2019, the appellant requested the Inquiry Officer for supply of the documents, which were not supplied. As such, left with no alternate, the appellant filed Special Civil Application No.14593 of 2019, praying for quashing of the entire inquiry as being vitiated by malafide. In the said petition, notices were issued on 28.8.2019, fixing on 17.9.2019. Notice was served on the Market Committee on 3.9.2019. Thereafter, in great haste, without following the procedure prescribed for holding departmental inquiries, and without referring to the request of the appellant for supply of the documents, ex-parte inquiry report is submitted and based on that, dismissal order is passed on 16.9.2019, a day before the date fixed in the Writ Petition, without issuing any fresh show cause notice or supplying the copy of the inquiry report. The dismissal order was challenged by way of amendment in Special Civil Application No.14593 of 2019. Learned Single Judge by the impugned order dated 27.11.2019, although held that the petition requires consideration, but no interim relief having been granted, present Letters Patent Appeal has been filed pressing for some interim protection as the entire impugned proceedings and the order are not only de hors the Rules but also tainted with malafide. Prima facie case for interim relief is made out.*

4. Normally, in the matters of dismissal, interim reliefs are not granted. But, considering the facts and circumstances of this case, as recorded above, we provide as an interim measure that effect and operation of the impugned dismissal order shall remain stayed. The appellant would be entitled to continue in service and be paid salary duly admissible to him. However, it would be open for the Market Committee, whether or not to take work from him.

*Direct Service is permitted.”*

3. By way of this application, the applicant has made a grievance that as the function of the High Court was halted from 20.03.2020 due to the pandemic on account of COVID-19 virus, the Letters Patent Appeal was also not listed for hearing and the applicant continued to attend to his duties but on 05.11.2020, a notice came to be received by the applicant from the opponent no.1 – Market Committee that in view of the provisions of Article 226(3) of the Constitution of India, the interim relief stands automatically vacated on expiry of 15 days from the date of filing of the Civil Application for vacating relief.

3.1. It is the say of the applicant that in the proceeding of Writ Petition PIL No. 42 of 2020, interim orders are directed to be automatically extended because of non working of the Court in physical form. This has been thereafter extended till 31.12.2020. He therefore is before this Court with the following prayers: -

“(A) Your Lordships may be pleased to stay the further operation and implementation of the notice dated 05.11.2020 issued by the opponent no.1

*Market Committee at Annexure-D to this application and thereby be pleased to restrain the opponent no.1 – Market Committee from terminating the services of the applicant in any manner whatever.*

*(B) Your Lordships may be pleased to pass such other and further orders which may be deemed fit and proper in the interest of justice.”*

*4. Before this Court takes up the matter for hearing, learned senior advocate Mr. Percy Kavina appearing for the opponent no.1 – Market Committee, who has, in terms, agreed not to implement the said notice dated 05.11.2020 till the main petition being Special Civil Application No. 14593 of 2019 is adjudicated by the Court finally. He has fairly submitted that there is already a direction issued by this Court on 24.12.2019 and the opponent no.1 shall abide by the same till the learned Single Judge adjudicate the matter on merit after availing the opportunities to both the sides.*

*5. Learned Assistant Government Pleader Ms. Jirga Jhaveri also has no objection to the matter being decided by learned Single Judge.*

*6. Learned advocate Mr. Dipen Desai appearing for the applicant insists on protection to the applicant as according to him, his appeal which has been preferred, has been admitted by the Court and the protection has already been accorded by way of an interim relief.*

*7. In wake of the request made by the parties and a categorical statement made by learned senior advocate Mr. Kavina in respect of notice issued on 05.11.2020, the*

*matter is being relegated to the learned Single Judge for expeditious hearing which shall be requested by either side, by continuing the interim relief granted by this Court on 24.12.2019, till the matter is, on merit, adjudicated by the learned Single Judge. This interim relief would also have no bearing on merit at the time of final adjudication. The parties shall cooperate In expeditious hearing of the matter.*

8. *This Civil Application stands disposed of accordingly.”*

2. In wake of the above order, present appeal stands disposed of with no order as to cost.

**(SONIA GOKANI, J)**

**(SANGEETA K. VISHEN, J)**

MISHRA AMIT V./Bhoomi