

GOVERNMENT OF JAMMU AND KASHMIR
DEPARTMENT OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS
Civil Secretariat Srinagar/Jammu.

Subject:- Judgment of Hon'ble Supreme Court on automatic expiry of stay orders in six months.

Circular No: 07 - JK(LD) of 2020.
Dated : 25 - 11 - 2020.

It has been observed that in a large number of cases in Hon'ble Courts involving the Government as a party, any action in the matter under dispute/challenge in the Hon'ble Courts cannot be taken as a result of interim orders passed by the Hon'ble Court. Such interim orders preventing further action are typically in the nature of :-

- (a) Stay on further proceedings/transfers/tenders/etc.;
- (b) Orders requiring maintenance of status quo/status quo ante;
- (c) Orders requiring reversal of decisions through an interim order till a final decision is taken; or
- (d) Orders of a similar nature.

It has been noticed that many cases lie pending unresolved for the above reasons for a number of years leading to administrative bottlenecks and delays.

In two major judgments, the Hon'ble Supreme Court has laid down the law on this matter. These are "*Asian Resurfacing of Road Agency Pvt. Ltd & anr. Vs. Central Bureau of Investigation decided on 28.03.2018*" and "*M.A. No.1577 of 2020 in Crl. Appeal Nos. 1375-1376 of 2013 decided on 15.10.2020*". The relevant portions of the judgments are:-

(a) "*Asian Resurfacing of Road Agency Pvt. Ltd & anr. Vs. Central Bureau of Investigation decided on 28.03.2018*"

".....that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order. The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized. The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on expiry of period of stay, proceedings can commence unless order of extension of stay is produced."

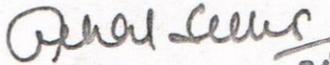
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(b) "M.A. No.1577 of 2020 in Crl. Appeal Nos. 1375-1376 of 2013 decided on 15.10.2020"

"We must remind the Magistrates all over the country that in our pyramidal structure under the Constitution of India, the Supreme Court is at the Apex, and the High Courts, though not subordinate administratively, are certainly subordinate judicially. This kind of orders fly in the face of para 35 of our judgment. We expect that the Magistrates all over the country will follow our order in letter and spirit. Whatever stay has been granted by any court including the High Court automatically expires within a period of six months, and unless extension is granted for good reason, as per our judgment, within the next six months, the trial Court is, on the expiry of the first period of six months, to set a date for the trial and go ahead with the same."

From the above two judgments, it is clear that any stay granted by any Hon'ble Court, including Hon'ble High Court, has a validity of six months only and the same automatically expires at the end of six months unless explicitly extended by a fresh order.

Based on the above judgments, all the Administrative Secretaries/HODs are required to take note of the directions of the Hon'ble Supreme Court and act accordingly. All Administrative Secretaries/HODs shall review all administrative actions/procedures held up on account of interim Court orders and in case the orders are more than six months old, treat the orders as expired and proceed accordingly.


(Achal Sethi) 25.11.20

Secretary to Government.

No:- LD(SL) 2020/33.

Dated:- 25 - 11 - 2020.

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