RATNAYAKE
V.
WIJESINGHE AND OTHERS

COURT OF APPEAL
GOONEWARDENE, J. AND
PALAKIDNAR, J.
C.A. NO. LA 114/87
D.C. COLOMBO NO. 5345/Z
OCTOBER 20, 1987.

Declaratory Action — Entitlement to Scholarship — Interim Injunctions & Enjoining orders and their discharge.

The plaintiff (Wasantha Wijesinghe) filed action against the petitioner — 1st defendant (Ratnayake) seeking a declaration of his entitlement to a scholarship abroad relating to the production of pharmaceuticals and a permanent injunction restraining the 1st to 4th defendants from continuing to take steps to send out the 5th and 6th defendants on scholarship. He also sought an interim injunction and enjoining order against 1 to 4 defendants on the same lines as the permanent injunction and an enjoining order against 5 and 6 defendants from proceeding on such scholarship. On the matter being supported ex parte the District Judge issued the enjoining orders and notice of application for interim injunction on 1 to 4 defendants. The 1 to 4 defendants applied to have the enjoining order discharged. After inquiry the District Judge granted the interim injunction against 1 to 4 defendants so that the enjoining order would cease to be operative.

Held:—

(1) If the District Judge felt that the enjoining order should not be discharged he could have so ordered instead of deciding at that stage whether or not the interim injunction should be granted.

(2) Proceedings upon an application to discharge an enjoining order are distinct from proceedings in opposition to the grant of an interim injunction.

(3) The plaint does not disclose even a cause of action upon the material averred quite apart from any question of the plaintiff having made out a case with respect to which it could be thought he had a real prospect of winning —an essential ingredient to succeed in an application for an interim injunction.

(4) An enjoining order cannot be issued where there is no application for an interim injunction. Against the 5th and 6th defendants there was no application for an interim injunction. Hence they could not have been enjoined.

(5) It is no part of the Court's function to involve itself with questions of this kind relating to the selection of candidates to be sent out on scholarship. Judges are ill qualified to decide which of several aspirants for a scholarship should be chosen, especially when it is no part of the terms of employment of any particular claimant that he is assured of any such right.

Cases referred to:

1. *Hotel Galaxy Ltd. v. Mercantile Hotels Management Ltd.* [1987] 1 Sri L.R. 5
2. *Jinadasa v. Weerasinghe* 31 NLR 33, 34
3. *Preston v. Luck* (1884) 27 Ch. D. 497, 506, 508
4. *Felix Dias Bandaranayake v. State Film Corporation* [1981] 2 Sri L. R. 287, 302
5. *Hubbard v. Vesper* [1972] 1 All ER 1023, 1029, 1032; [1972] 2QB 84
6. *Richard Perera v. Albert Perera* 67 NLR 445
7. *Gamage v. The Minister of Agriculture and Lands* 76 NLR 25, 43, 44.
8. *American Cyanamid Co. v. Ethicon Ltd.* [1975] 1 All ER 504
9. *Dissanayake v. Agricultural and Industrial Credit Corporation* 64 NLR 283, 285.
10. *Donmar Production Ltd. v. Bart* [1967] 2 All ER 338, 339, [1967] 1 WLR 740, 742
11. *Harman Pictures NV v. Osborne* [1967] 2 All ER 324, 326; [1967] 1WLR 723, 738.
12. *Smith v. Inner London Education Authority* [1978] 1 All ER 411, 426
13. *The Council of Civil Service Unions v. Minister for the Civil Service* [1984] 3 All ER 935, 951

APPEAL from order of the District Court of Colombo

Dr. H. W. Jayewardene Q.C. with *W. P. Gunatilleke* and *J. A. J. Udawatte* for Petitioner-1st defendant.

D. R. P. Gunatilleke with *K. Balapatabendi, W. A. Karunaratne* and *Neil Perera* for plaintiff-respondent.

Cur. adv. vult.

November 6, 1987
GOONEWARDENE, J.

This is an appeal, with leave of this Court first obtained, preferred by the petitioner the Chairman of the Sri Lanka Ayurvedic Drugs Corporation against an order of the District Judge made on 24th August 1987 granting an interim injunction.

The plaintiff-respondent instituted this action in the District Court against the petitioner the 1st defendant and others seeking upon his plaint as substantive reliefs, a declaration of his entitlement to a scholarship abroad for 1986 relating to the production of pharmaceuticals and a permanent injunction restraining the 1st to 4th defendants from continuing to take steps to send out the 5th and 6th defendants on scholarship. Along with his plaint the plaintiff filed an affidavit and sought an interim injunction in like terms as the permanent injunction and two enjoining orders directed respectively against the 1st to 4th defendants on the same lines as the permanent injunction and against the 5th and 6th defendants from proceeding on such scholarship. There was no interim or permanent injunction sought against the 5th and 6th defendants.

In brief the plaintiff's case was that he along with the 6th defendant and two others employed in the manufactory of the Sri Lanka Ayurvedic Drugs Corporation as pharmacists or in allied capacities were interviewed by the 1st to 3rd defendants for the purpose of selection to be sent abroad upon a scholarship granted by the World Health Organisation for training in the production of pharmaceuticals, as was also interviewed the 5th defendant whose employment was not in such manufactory but in the Corporation's herbarium at Watupitiya; that he the plaintiff was placed first in order of merit at such interview as evidenced by the document X2 a communication sent by the 1st defendant to the 2nd defendant the Administrative Manager of the W.H.O./U.N.D.P. project for the development of traditional medicine, which communication also requested that early steps be taken to send the plaintiff

upon such scholarship; that in consequence of the contents of X2 he the plaintiff made preparations to proceed abroad but received no further communication; that upon oral inquiry made by him from the 4th defendant the Secretary of the Ministry of Indigenous Medicine he learnt that the 5th and 6th defendants had been selected instead for this scholarship with no reasonable prospect of him being sent; that written representations made by him produced no results; and that therefore a cause of action had accrued to him to obtain a declaration that he had every right to receive such scholarship and to proceed abroad upon it.

The plaintiff's application for interim relief was supported ex parte before an Additional District Judge on 26th November 1986 and the latter issued the two enjoining orders asked for against the 5th and 6th defendants and the 1st to 4th defendants respectively, and directed that notice of the interim injunction sought against the 1st to 4th defendants be issued on them. The Additional District Judge also directed that the case be called on 7th January 1987.

On 4th December 1986 the 1st defendant the present petitioner filed a petition and affidavit in the District Court and sought a discharge of the enjoining order. He alleged that disciplinary proceedings against the plaintiff had commenced and as such he could not be sent out on this scholarship. Upon an examination of these papers, in particular the prayer of such petition, it is to be observed that such application was limited to the discharge of the enjoining order directed against the 1st to 4th defendants and did not touch the enjoining order issued against the 5th and 6th defendants. This application was supported before the District Judge on 9th December 1986 and he directed that an order nisi be entered under section 377(a) of the Civil Procedure Code calling upon the plaintiff to show cause on 18th December 1986 why this enjoining order should not be set aside. As the proceedings of this day show (document P8) the District Judge had noted the fact that at that stage it was only the 1st defendant who was taking objection to the enjoining order and it had been submitted to him that the Ayurvedic Drugs Corporation itself had not been made a party

and that therefore the enjoining order had no validity, that it was a matter within the absolute discretion of the Corporation as to who should be sent out on this scholarship and that the plaintiff had no legal rights in this regard. As the proceedings show, the District Judge was of the view that these were reasonable grounds that induced him to make his order.

On 18th March 1987 the plaintiff filed his objections to such order nisi being made absolute and sought a dismissal of the 1st defendant's application to have the enjoining order discharged. On 18th May 1987 this matter was inquired into and the District Judge made his order on 24th August 1987. It is this order which is sought to be assailed in this appeal, on the footing that an enjoining order ceased to have operation upon the grant or refusal of the interim injunction asked for, the District Judge dealt with the matter before him by granting such interim injunction.

I find it difficult to disagree with the submission of learned Queen's Counsel for the petitioner that in doing so he lost sight of the scope of the matter for inquiry before him, which was limited to the question whether the order nisi entered upon the papers filed by the petitioner should be discharged or on the other hand made absolute. In the case of *Hotel Galaxy v. Mercantile Hotels Management Ltd.* (1) the Supreme Court accepted that a District Court had jurisdiction to vacate an enjoining order granted by it ex parte. Atukorale, J. (at page 30) said: ". . . . it was legally competent for the learned District Judge to vacate the enjoining order which was made by him ex parte". I do not fail to appreciate that what perhaps the District Judge was trying to do was to eliminate what he thought was a duplication of hearings into the same question, but one must nevertheless not lose sight to what, upon the procedure adopted by him, was the scope of the matter for inquiry. Although it is undoubtedly right to say that an order granting or refusing an interim injunction would supplant the enjoining order, if as has been held it was legally competent for the Court to discharge the enjoining order granted by it ex parte, in my view it was also competent for the 1st defendant to make such application for such discharge and expect it to be considered

without at the same time running the risk of finding himself burdened with a more serious (at least in point of duration) interim injunction. Two things must be said. Firstly, if the District Judge felt that the enjoining order should not be discharged, he could have so ordered without going on to decide at that stage whether or not the interim injunction asked for should or should not be granted and that would have resulted in the maintenance of the then status quo. Secondly, flowing from the views of Atukorale, J. in the case cited above, proceedings upon an application to discharge an enjoining order are distinct from proceedings in opposition to the grant of an interim injunction, so that a decision upon the former in a particular way need not necessarily and in every case involves a decision on the latter. An observation must be made as to the advantage the 1st defendant would have had at any inquiry specifically held after notice to him and inter partes, to decide whether an interim injunction should issue or not. Such advantage would arise out of the burden cast upon the plaintiff to establish the existence of material justifying its issue, a burden to be discharged in the presence of the 1st defendant who would have been in a position to challenge and controvert what was urged. That advantage the 1st defendant lost upon the course the District Judge adopted, and lost in my view without him being in a position to reasonably anticipate the risk of such loss. Upon this one ground alone then, that the District Judge stepped outside the scope of the matter for inquiry before him, his order allowing the injunction to issue cannot I think be allowed to stand.

There is however, as I see it, an objection of a much more fundamental and serious nature to permitting such injunction to remain.

The jurisdiction granted to a District Court to issue injunctions is by section 54 of the Judicature Act. Subsections (b) and (c) of section 54(1) deal with the issue of injunctions "during the pendency of the action" and is of no concern here. What the plaintiff here invoked was the jurisdiction granted by section 54(1) (a) and the part material to this case reads thus:

"54. (1) Where in any action instituted in a . . . District Court . . . it appears (a) from the plaint that the plaintiff demands and is entitled to a judgment against the defendant, restraining the commission or continuance of an act or nuisance, the commission or continuance of which would produce injury to the plaintiff . . . the Court may . . . grant an injunction restraining any such defendant . . ."

The words of subsection (a) of section 54 (1) are practically a verbatim reproduction of the words of section 86 (a) of the Courts Ordinance, a legislative predecessor of the Judicature Act and against the background of that provision in *Jinadasa v. Weerasinghe* (2) Dalton J. (at p. 34) said:—

"Certain issues suggested by defendant (at the hearing into an application for the discharge of an interim injunction issued ex parte) were objected to by plaintiff. In so far as they raise the question whether plaintiff had any substantial ground for his claim they were rightly allowed. In such a matter the Court must be satisfied that there is a serious question to be tried at the hearing and that on the facts before it there is a probability that plaintiff is entitled to relief (*Preston v. Luck* at p. 506)". (3)

The very words of the section supports this view. It must appear to the Court from the plaint that the plaintiff is entitled to a judgment against the defendant.

The approach of the Indian Courts to interim injunctions, or as they are called there, temporary injunctions is shown in the following passage from the work "Commentaries on the Law of Injunctions" by G. P. Gupta 3rd Edition 1984 (at page 17) which reflects the effect of the statutory provisions and authorities there:—

"On the assumption that the party asking interference of the Court to protect his legal right needs the protection of the Court until his legal right is established, the Courts grant injunction. Therefore the party approaching the

Court for protection must show a fair prima facie case to establish the title he asserts".

As exegetical perhaps of the expression 'fair prima facie case' the author (at p.16) states:—

"To get an interim injunction the applicant must satisfy the Court that there is a serious question to be tried and that he has a fair chance of winning of the suit".

Dr. Jayawardene, Counsel for the petitioner at the hearing before us, referred us to the case of *Felix Dias Bandaranayake v. State Film Corporation* (4) where Soza J. (at p. 302) expressed his views thus:—

In Sri Lanka we start off with a prima facie case. That is, the applicant for an interim injunction must show that there is a serious matter in relation to his legal rights, to be tried at the hearing and that he has a good chance of winning. It is not necessary that the plaintiff should be certain to win. It is sufficient if the probabilities are he will win. Where however the plaintiff has established a strong prima facie case that he has title to the legal right claimed by him but only an arguable case that the defendant has infringed it or is about to infringe it, the injunction should not be granted (*Hubbard v. Vesper*) (5). If the probability is that no right of the plaintiff will be violated or that he will suffer no such wrong as the law recognises then the injunction will not issue — See for instance the case of *Richard Perera v. Albert Perera* — (6) and *Gamage v. The Minister of Agriculture and Lands* (7)

Dr. Jayawardene also referred us to the case of *American Cyanamid Co. v. Ethicon Ltd.* (8) with respect to which Soza J. in the case just cited (at p. 301 — 302) said:

"The burden is on the plaintiff to show that there is a serious question to be tried in relation to his legal rights —See *Jinadasa v. Weerasinghe* (2) and Dissanayake v.

Agricultural and Industrial Credit Corporation (9). The requirement that there should be a serious question to be tried in relation to the legal rights which the plaintiff claims with the probability of his winning has always been understood to mean that the plaintiff must show the existence of a prima facie case —see for instance Banerjee: Law of Specific Relief (1978 6th Edition) p. 585, also Nathan: Law of Defamation in South Africa (1933) pp 183, 184, *Preston v. Luck* (3) *Jinadasa v. Weerasinghe* (supra). This is the law of Sri Lanka and it is the law of India and South Africa. It was the law of England too for upwards of a century until Lord Diplock in 1975 threw it overboard in his speech in the House of Lords case of *American Cyanamid Co. v. Ethican Ltd.* (8). Lord Diplock regarded the requirement of a serious question to be tried as meaning that the plaintiff's case must not be frivolous or vexatious".

Lord Diplock (at p. 510) did say:

"The use of such expressions as 'a probability', 'a prima facie case', or 'a strong prima facie case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried".

Lord Diplock however, it seems to me, interpreted differently the decision in *Hubbard v. Vesper* (supra) as the following passage (at p. 509-510) shows

"An attempt had been made to reconcile these apparently differing approaches to the exercise of the discretion by holding that the need to show a probability or a strong prima facie case applied only to the establishment by the plaintiff of his right, and that the lesser burden of showing an arguable case to be tried applied to the alleged

violation of that right by the defendant *(Denmer Production Ltd. v. Bart* (10) per Ungoed Thomas J., *Harman Pictures NV v. Osborne* (11) per Goff J) The suggested distinction between what the plaintiff must establish as respects his right and what he must show as respects its violation did not long survive. It was rejected by the Court of Appeal in *Hubbard v. Vesper* (5) a case in which the plaintiff's entitlement to copyright was undisputed but an injunction was refused despite the apparent weakness of the suggested defence".

Lord Diplock did not accept as good law the proposition that seeks to distinguish the requirement of a strong prima facie case as to title to the legal right claimed from an arguable case as to its infringement.

Reading the speech of Lord Diplock as a whole, if I may say so with respect it seems to me that he did not say that the use of expressions such as "a probability", "a prima facie case", or "a strong prima facie case", were wrong in any real sense. Rather what he strived for was to deprecate the use of such expressions in the context of the exercise of a discretionary power to grant an interim injunction, as such use would lead to confusion as to the object sought to be achieved. Instead, he put it differently and said that the Court must be satisfied that the claim is not frivolous or vexatious or in other words that there is a serious question to be tried. Upon its face this statement looks to me logical enough. If the claim be seen to be frivolous or vexatious there cannot be a serious question to be tried. The same approach is seen in Gupta's "Commentaries on the Law of Injunctions" (ibid) where the author (at p.16) says "Before issuing a temporary injunction against a party the Court must be satisfied that the claim of the applicant is not frivolous or vexatious but is well founded" This statement occurring in this work lies virtually alongside what I cited earlier from it, that the party applying for an injunction must show a strong prima facie case.

The true question as formulated by Lord Diplock, as I see it, is that contained within the following words (at p.510) used by

him "So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought".

My view that this is the true question suggested in that case finds support I think in the words of Geoffrey Lane L.J. in *Smith v. Inner London Education Authority* (12) which read, "In any event if one does pose the American Cyanamid question, namely: do the plaintiffs have a real prospect of succeeding in the eventual trial?, the answer is No."

A real prospect of success in the eventual trial is the test then formulated in that case and this is the view of Soza J. himself (expressed at P. 302) in the case of *Felix Dias Bandaranayake v. State Film Corporation* (supra) in the words ". . . that he has a good chance of winning".

I would therefore adopt this as the true test (without seeking to draw distinctions between the requirement in this regard as to the standards applicable to the plaintiff's claim of title to the right claimed, and to the defendant's infringement of such rights) and at the same time venture to express the view that this test is not in any analytical sense disparate from the test based upon the existence of a prima facie case, especially when one has regard to the fact that there appears to be no difference in the approach here between an interim injunction granted ex parte without hearing the defendant's side of the matter and one granted inter partes in the presence of the defendant.

The same question as posed by Geoffrey Lane L. J. in *Smith v. Inner London Education Authority* (supra) posed in the instant case must, I think, result in the same answer. I have to agree with Counsel for the petitioner that the plaint does not disclose even a cause of action upon the material averred, quite apart from any question of the plaintiff having made out a case with

respect to which it could be thought he has a real prospect of winning. It must be kept in mind that the Corporation itself was not made a party to the action and apparently the cause of action averred is claimed to arise against the 1st to 3rd defendants merely because they were members of the Selection Board. I find it impossible to go along with the contention of Counsel for the respondent that there was any act or wrong committed by these three defendants, or indeed any of the other defendants, that could be said to have constituted an infringement of any right that the plaintiff had. In this connection one other matter must be taken note of. The 5th and 6th defendants are necessarily persons who would have been affected by the relief claimed upon the plaint if granted. However the relief claimed against them directly was limited to an enjoining order. That enjoining order had been sought to be operative till the determination of the question whether the injunction asked for against the 1st to 4th defendants (whether interim or permanent is not made clear in the prayer to the plaint) was made. The terms of section 664 of the Civil Procedure Code are clear that an enjoining order must have reference to an interim injunction sought against a particular defendant or defendants, and therefore if an enjoining order was sought against the 5th and 6th defendants it could have been granted to be operative only till the grant or refusal of an interim injunction against them. To put it in another way, there can be no enjoining order issued against a person against whom no interim injunction has been sought. The enjoining order asked for and allowed by the Additional District Judge against the 5th and 6th defendants instead has reference, not to an interim injunction against them, but to one against the 1st to 4th defendants. An enjoining order of that nature is not one which it was competent for the Additional District Judge to grant in law and in doing so I think he was patently in error.

The plaintiff rested his entire case, as did his Counsel at the hearing before us, on the document X2. What was this document? It was a communication by the 1st defendant to the 2nd defendant both of whom were, on the plaintiff's own showing, on the Selection Board. The 1st defendant is the Chairman of the Ayurvedic Drugs Corporation and the 2nd defendant is described as the Administrative Manager of the

W.H.O./U.N.D.P. project for the development of traditional medicine. Dr. Jayawardene contended that the 2nd defendant himself was no more than an employee of the Ayurvedic Drugs Corporation and that this seems to be so appears to find support in the document 'C' filed with the petitioner's papers here which is a communication under the hand of the W.H.O. representative in Sri Lanka. It refers to the applications for these scholarships (described there as fellowships) made to him (by the 5th and 6th defendants) and if not to him, through him to some other. What does document X2 state? It states that the plaintiff having been selected into first position, his name was being put forward for this scholarship by the Corporation. That this is no more than a recommendation is clear upon its terms and it is significant that in a request contained in it to take steps to send out a person upon the scholarship early, such request is not specifically to send out the plaintiff. Further, document 'C' appears to show as I have just pointed out that the applications for these scholarships (fellowships) had to be made by the applicants themselves to the U.N.D.P. representative or through him to another, and therefore clearly the recommendation of the 1st respondent as shown upon X2 has to be considered a recommendation and no more.

As I indicated earlier the plaintiff's papers in the District Court nowhere show that any communication of any kind was made to him upon which he could claim to have justifiably built up a legitimate expectation of being awarded this scholarship and the fact that his case was not presented anywhere upon such footing to my mind suggests that there was no material available upon which he could have made an attempt to make out any case on that basis.

The reasoning adopted by the District Judge in granting the injunction was criticised by Counsel for the petitioner, that it was no part of the Court's function to involve itself with questions of this kind relating to the selection of candidates to be sent out on scholarship. In this connection I think it would be useful to reproduce here a passage from the speech of Lord Diplock although it was with respect to questions of government policy and in a different context, in the case of *The Council of Civil Service Unions v. Minister for the Civil Service* (13)

"Such decisions will generally involve the application of government policy. The reasons for the decision-maker taking one course rather than another do not normally involve questions to which, if disputed, the judicial process is adopted to provide the right answer, by which I mean that the kind of evidence that is admissible under judicial procedures and the way in which it has to be adduced tend to exclude from the attention of the Court competing policy considerations which, if the executive discretion is to be wisely exercised, need to be weighed against one another, a balancing exercise which Judges by their upbringing and experience are ill qualified to perform".

Much the same kind of thing can be said with respect to any endeavour by a Court to decide which one of several aspirants for a scholarship should be chosen, especially when it is no part of the terms of employment of any particular claimant that he is assured any such right.

It can by no means I think be said either that the plaintiff has made out a prima facie case (if one wishes to adopt that test) or to adopt the test suggested by Lord Diplock that the plaintiff has a real prospect of succeeding in the eventual trial. Indeed I have to repeat that the plaint does not disclose any cause of action upon which it is possible to say this action has been properly founded. I would like to reproduce here and stress the words of Gupta in "Commentaries on the Law of Injunctions" (ibid) at page 16 where he says "Before issuing the *ad interim* injunction it is the bounded duty on the part of the Court to apply its mind and find out the nature of relief asked for and the circumstances under which the party is asking the aid of Court". Hence the injunction issued cannot in all the circumstances be allowed to remain.

To proceed however a step further and assume that the plaintiff had overcome this hurdle (which he clearly has not) the next question as Lord Diplock says is whether the balance of convenience lies in favour of granting or refusing the interlocutory relief sought. As to that the formulation adopted by Soza J. in *Felix Dias Bandaranayake v. State Film Corporation* (Supra) at page 303 is thus:

> "This is tested out by weighing the injury which the defendant will suffer if the injunction is granted and he should ultimately turn out to be the victor against the injury which the plaintiff will sustain if the injunction were refused and he should ultimately turn out to be the victor".

Upon this test, if the interim injunction is allowed to remain but the defandants ultimately turn out to be the victor, the 5th and 6th defendants will have been prevented from proceeding upon this scholarship. On the other hand if the injunction were dissolved but the plaintiff was to turn out the victor, he will get the declaration he seeks and a permanent injunction against the 1st to 4th defendants the result of which will be to prevent the 5th and 6th defendants from proceeding upon this scholarship. The plaintiff himself, in a merely declaratory action of this nature and having regard to the relief sought in the plaint in the latter eventuality will not be assured of proceeding upon this scholarship nor will he have a decree which by enforcement could achieve that objective. In either event the plaintiff will not go out on the scholarship. Therefore upon a balance of convenience as well, the injunction should not be allowed to remain.

I think this appeal succeeds and in allowing it I would make order dissolving and discharging the interim injunction granted by the District Judge by his order of 24th August 1987 and to avoid any misunderstanding or confusion I would make a like order with respect to the enjoining order that preceded it. Since what I have said applies in general with equal force to the enjoining order issued against the 5th and 6th defendants as well, and in particular having regard to what I have said with respect to them and to the unjustifiable hardship that would result to them if this is not done, I would in the circumstances of this case acting in revision also make a like order discharging the enjoining order issued against the 5th and 6th defendants.

The plaintiff-respondent will pay the petitioner his costs of this appeal.

PALAKIDNAR, J. — I agree.

Appeal allowed. Interim injunction discharged
Enjoining order against 5 and 6 defendants discharged.

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