IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL APPLICATION NO. 3049 of 2020

In F/LETTERS PATENT APPEAL NO. 12931 of 2020

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STATE OF GUJARAT
Versus
KAMLABEN D. PATEL

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Appearance:
MR. TIRTHRAJ PANDYA AGP(1) for the Applicant(s) No.1,2,3
for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 17/12/2020

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. This Civil Application seeking condonation of delay of 341 days in filing the Letters Patent Appeal against the judgment and order passed by a learned Single Judge of this Court dated 11th March, 2019 in the Special Civil Application No.9917 of 2007 is at the instance of the original respondents (State of Gujarat and others).

2. The averments made in the Civil Application are as under:-

> *"2. The Applicants respectfully submit that the Learned Single Judge of this Hon'ble Court had passed an oral Judgment on 11.03.2019 and the copy of the order was available on the website of the Hon'ble High Court received by the applicants on 12/04/2019.*
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> *3. It is submitted that the office of the Government Pleader has sent the opinion dated 15/06/2019 to the applicants not to challenge the judgment. But he had also opined to take appropriate actions if*

the judgment is found unfit and illegal.

4. It is most respectfully submitted that the applicant no.2 have send the papers to applicant no.1 with opinion not to prefer appeal on 11/07/2019 which was submitted which was submitted on file by the concerned branch health and family welfare department on 12/07/2019 but some clarifications were needed and hence a letter was sent to additional director (medical services) on 19/07/2019.

5. It is most respectfully submitted that the additional director (medical services) sent the revised proposal on 04/09/2019 and on 16/09/2019 the department called for the opinion of General Administration Department, Inquiry Branch and on 27/09/2019 General Administration Department opined to obtain the opinion of the Legal Department.

6. It is submitted that the file was sent to the Legal Department on 11/10/2019 with proposal to file LPA which was rejected by the Legal Department on 07/12/2019 and hence as per procedure, Health and Family Welfare Department sent the file to Hon. Chief Minister through proper channel on 16/12/2019 who has given approval to file LPA in present case on 03/01/2020.

7. It is humbly submitted that the file was sent to the Legal Department to issue letter to the Government Pleader on 08/01/2020 which issued a letter to file LPA on 22/01/2020 and the Health and Family Welfare Department sent a letter to the Additional Director on 12/02/2020 to file LPA and the said office forwarded the papers personally to the Government Pleader office on same day.

8. It is humbly submitted that the applicants have applied for certified copy and the same was received by the office of the Government Pleader and the office of the applicant has received the same.

9. The necessary details have been called upon and the same have been supplied to the office of the Government Pleader including the reasons of delay.

10. The Letters Patent Appeal has been drafted and received on 19/03/2020."

3. Thus, it appears from the averments made in this application that although the office of the Government Pleader expressed its opinion that having regard to the merits of the case, it is not a fit case to challenge

the judgment passed by the learned Single Judge by filing the appeal, the State Government proceeded to file the appeal with delay of 341 days. Not only the office of the Government Pleader expressed negative opinion but the Legal Department also opined that it is not a fit case to prefer an appeal.

4. It appears that in view of the two negative opinions, one by the office of the Government Pleader, High Court of Gujarat and the other by the Legal Department of the State Government, the file was sent to the office of the Hon'ble Chief Minister, which in turn insisted that the State Government should prefer an appeal.

5. In what circumstances, the office of the Chief Minister should intervene in these type of cases, has been explained by this Court in its order dated 17th December, 2020 passed in the Civil Application No.3051 of 2020. We quote the relevant paragraphs of the order.

> *"5. We take notice of the fact that the impugned judgment of the learned Single Judge is dated 25.03.2019. The legal opinion was sought by the Commissioner of Health (Medical Services) from the office of the Government Pleader vide its communication dated 29.03.2019. Mr. Pandya, informs this Court that the office of the Government Pleader opined vide communication dated 09.04.2019 that having regard to the merits of the matter, the impugned judgment and order passed by the learned Single Judge should not be challenged. We also take notice of the fact that even the Legal Department of the State Government declined to grant approval to prefer an appeal. Despite two opinions, one expressed by the office of the Government Pleader and the other by the Legal Department that it is not a fit case to prefer an appeal, the other departments of the State Government like the Heath and Family Welfare, Education Department, intervened and ultimately, saw to it that the appeal is filed after a delay of 320 days. We also take notice of the fact that after the office of the Government Pleader and the Legal Department of the State, opined that no case is made out to prefer an appeal, the office of the Chief Minister also intervened and saw to it that an appeal is preferred.*
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> *6. We are not convinced worth the name with the sufficient cause*

assigned by the State in its application seeking condonation of delay.

7. We called upon Mr. Pandya, the learned AGP to explain as to how the office of the Chief Minister came into picture for the purpose of taking the decision that the State should file an appeal against the order passed by a learned Single Judge, more particularly when the office of the Government Pleader as well as the Legal Department of the State opined that having regard to the merits of the case, no appeal should be preferred.

8. In response to our query, Mr. Pandya, the learned AGP brought to our notice a Circular dated 27.09.2005 issued by the Chief Secretary as regards the filing of the appeals. Mr. Pandya made the Circular available for our perusal. We take notice of Clause 7 of the Circular. Clause 7 reads thus:

> *"(7) Where LD has not agreed with the view of the department for challenging the order, the Department is generally required to agree with the advice of LD and comply with the order of the Court in rare cases where the Department strongly feels that, it is necessary to challenge the order in public interest, it will move a proposal to file an appeal or appropriate proceedings through Chief Secretary to the Chief Minister, as required under the existing rules, and obtain their orders. It will be responsibility of the concerned Secretary to follow up the matter, so that necessary orders are obtained within the time available for filing the appropriate proceedings."*

9. Thus, plain reading of clause 7 referred to above, would indicate that, if the Legal Department is of the view that the order is not worth challenging in appeal, then the concerned department should generally agree with the opinion of the Legal Department and proceed to comply with the order of the Court, however, in rare cases only, where the department strongly feels that it is necessary to challenge the order in public interest, it will move a proposal to file an appeal through the Chief Secretary to the Chief Minister under the existing rules and obtain appropriate orders. There is not a whisper in the application as regards the concerned department being strongly convinced that it is necessary to challenge the order passed by a learned Single Judge in public interest, despite the negative opinion rendered by the office of the Government Pleader, State of Gujarat as well as the Legal Department of the State.

10. As we are considering whether the delay of 320 days should be condoned or not, we must look into a very recent order passed by the Supreme Court in the case of State of Madhya Pradesh and Others Vs. Bherulal, (Special Leave Petition (C) Diary No. 9217 of 2020. The same reads thus:

"1. The Special Leave Petition has been filed with a delay of 663 days! The explanation given in the application for condonation of delay is set out in paragraphs 3 and 4.

2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statues prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 where the Court observed as under:

> *"12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.*
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> *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.*
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> *13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural redtape in the process. The government departments are under a special obligation to ensure*

that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay."

Eight years hence the judgment is still unheeded

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only "due to unavailability of the documents and the process of arranging the documents". In paragraph 4 a reference has been made to "bureaucratic process works, it is inadvertent that delay occurs".

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner State of Rs.25,000/- (Rupees twenty five thousand) to

be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.

9. The special leave petition is dismissed as time barred in terms aforesaid.

10. We make it clear that if the aforesaid order is not complied within time, we will be constrained to initiate contempt proceedings against the Chief Secretary.

11. A copy of the order be placed before the Chief Secretary, State of Madhya Pradesh."

11. Thus, the Supreme Court has frowned upon the Government in casually filing the applications seeking condonation of long and inordinate delay and that too, by not assigning any sufficient cause. According to the Supreme Court, the Court should not condone inordinate delay on mere asking.

12. We once again go back to the Circular of the State Government dated 27.09.2005 referred to above. The Circular makes it very clear that once the Legal Department is of the view that no case is made out for preferring an appeal, then, such opinion should ordinarily be accepted, unless the office of the Chief Minister of the State is of the view that it is necessary to challenge the order in public interest, the State should prefer an appeal. We fail to understand that what is the public interest involved in this particular litigation. In this litigation, the Government servant requested to sanction the medical bills to the tune of Rs.1,53,462/- . The daughter of the writ applicant aged 4 and ½ years was not developing physically as well as mentally compared to the other children of her age and in such circumstances, the writ applicant was advised by the doctors to go for treatment for the disease called the "Russel Silver Syndrome". The medical reimbursement was declined and that is the reasons the writ applicant had to come before this Court. The High Court allowed the writ application after taking into consideration all the relevant aspects of the matter.

6. We are of the view that we should not condone the delay, as no sufficient cause could be said to have been assigned for condoning the delay of almost one year and that too, with two negative opinions referred to above. There is no public interest involved in this litigation

which prompted the State to insist to file the appeal.

7. In the result, this application fails and is hereby rejected. Consequently, the appeal also stands dismissed.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

A. B. VAGHELA