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

**R/CIVIL APPLICATION NO. 3051 of 2020**
**In**
**F/LETTERS PATENT APPEAL NO. 17464 of 2020**

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STATE OF GUJARAT
Versus
HARSHADKUMAR A PANDYA

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

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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 is at the instance of the State of Gujarat, and another seeking condonation of delay of 320 days in filing the Letters Patent Appeal against the judgment and order passed by a learned Single Judge of this Court dated 25th March, 2019 in the Special Civil Application No. 8966 of 2004, by which, the learned Single Judge allowed the writ application filed by the original writ applicant (Government servant) and directed the State to pay the requisite amount towards the medical reimbursement to the writ applicant within a period of 6 weeks from the date of the receipt of the writ of the order. The learned Single Judge clarified that if the amount is not paid within 6 weeks, then, the writ applicant shall be entitled to 9% interest for the delayed period.

2. The averments made in the Civil Application for the purpose of assigning the sufficient cause reads as under :

> *"1.By way of present civil application, the applicants herein are seeking condonation of delay of 320 days in approaching this Hon'ble Court by way of aforesaid Letters Patent Appeal*

*challenging the impugned order dated 25.03.2019 passed by the Learned Single Judge in Special Civil Application No.8966 of 2004. It is submitted that some delay has occasioned in preferring the present appeal and the reasons for the same are stated herein under:*

*2. It is stated that legal opinion was sought by Commissioner of Health (Medical Services) from the office of the Government Pleader vide its communication dated 29.03.2019 with regard to the impugned judgment and order, after obtaining its computer copy and the same was received on 09.04.2019.*

*3. It is stated that a proposal was sent to the Principal Secretary, Health and Family Welfare Department containing the copy of the impugned oral judgment and order along with the aforesaid legal opinion vide communication dated 23.05.2019.*

*4. It is stated that the medical reimbursement branch of the applicants asked the State Government vide its communication dated 24.05.2019, to undertake the necessary procedure with regards to the impugned judgment and order.*

*5. It is stated that the proposal was sent by the Health and Family Welfare Department to the Education Department on 29.06.2019 to undertake the necessary procedure with regards to the impugned judgment and order.*

*6. It is stated that the Education Department sought the original file of Opponent No.1 herein from the Commissioner of Schools on 02.07.2019.*

*7. It is stated that the District Education Officer, Rajpipla, intimated the Joint Director of Education (Primary Education) on 4.7.2019 that the original file of Opponent No.1 herein is not available.*

*8. It is stated that Commissioner of Schools intimated on 5.7.2019 that Opponent No.1 be paid the medical reimbursement by the Health and Family Welfare Department vide the Education Department and pursuant to which the Education Department have its necessary remarks and forwarded the file to the Health and Family Welfare Department on 17.7.2019 seeking guidance.*

*9. It is stated that the Health and Family Welfare Department sought opinion from Additional Director, Medical Services to prefer an appeal against the impugned judgment and order on 31.7.2019 and pursuant to the same, the Additional Director, Medical Services opined on 3.8.2019 to seek guidance from the Legal Department.*

*10. It is stated that the Health and Family Welfare Department asked the Education Department to prefer an appeal on 7.8.2019 and the said proposal was forwarded to the Legal Department on 20.08.2019.*

*11. It is stated that the Legal Department did not grant approval to prefer an appeal on 07.12.2019 and returned back the file.*

*12. It is stated that the Education Department sought sanction from the Chief Minister's Office on 30.12.2019 to prefer*

*an appeal against the impugned judgment and order and the file for the said purpose was forwarded to the Legal Department on 9.1.2020.*

*13. It is stated that the Legal Department intimated the Commissioner of Schools regarding the sanction to prefer an appeal against the impugned oral judgment and order vide its communication dated 24.1.2020 and it was intimated to undertake the necessary procedure to prefer an appeal. The same came to be forwarded to the District Education Officer, Rajpipla on 31.01.2020.*

*14. It is stated that the Commissioner of Schools intimated the Education Department on 17.02.2020 that necessary procedure to prefer an appeal has to be undertaken by the Additional Director (Medical Services) as the latter was the necessary party and consequently, the same was communicated by the Education Department to the Secretary, Health and Family Welfare Department on 19.02.2020.*

*15. It is stated that the Health and Family Welfare Department intimated the Additional Director (Medical Services) on 3.6.2020 to undertake the necessary procedure to prefer an appeal and the said communication was received by the letter on 11.3.2020.*

*16. It is stated that necessary reasons and grounds to prefer an appeal against the impugned judgment and order were sought from the medical reimbursement branch on 26.3.2020 and the same were provided on the same day.*

*17. It is stated that the Additional Director, (Medical Services), sent the papers to the office of the Government Pleader on 21.04.2020 to prefer an appeal against the impugned judgment and order.*

*18. It is stated that as the complete set of papers along with the reasons for delay caused to prefer an appeal were not provided, the same were called for by the office of the Government Pleader and the same were received on 28.07.2020. It is further stated that some delay to send the necessary case papers occasioned in the interregnum period on account of closing of the office of the Government Pleader due to cases of Covid-19 traced in the premises.*

*19. It is stated and submitted that upon receipt of the complete set of case papers along with the reasons for delay caused in preferring the present appeal, the present appeal has been preferred.*

*20. It is submitted that the delay in preferring the present Letters Patent Appeal has occasioned on account of aforesaid administrative reasons and there is no intention of the Applicants to frustrate the adjudication of the controversy in the present Letters Patent Appeal.*

*21. The Applicants submit that the delay in the instant case may kindly be condoned since the same is not due to any negligence or abandonment of the cause by the applicants, but,*

*as stated herein above, the same is due to the efflux of time while deciding the further course of action to be undertaken by the applicants."*

3. We have heard Mr. Tirthraj Pandya, the learned AGP appearing for the State. Mr. Pandya, would submit that the delay has occasioned on account of certain administrative exigencies and such exigencies have been explained in the Civil Application. He would submit that the State Government has a good case on merits. He would submit that the learned Single Judge committed an error in taking the view that the writ applicant is entitled to seek medical reimbursement in accordance with the Rules. The learned AGP prays that in such circumstances, the delay may be condoned.

4. Having heard Mr. Pandya, the learned AGP appearing the State and having gone through the averments made in the Civil Application for condonation of delay, the only question that falls for our consideration is whether we should condone the delay of 320 days.

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.

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."*
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> *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 1/2 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.

13. In such circumstances referred to above, we are of the view that we should not condone the delay, as the same has not been explained satisfactorily and at the same time, we are also not inclined to condone the delay having regard to the merits of the case. The Civil Application stands rejected.

**(J. B. PARDIWALA, J)**

**(ILESH J. VORA,J)**

A. B. VAGHELA/SUCHIT