

STATE OF GUJARAT

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v.

TURABALI GULAMHUSSAIN HIRANI AND ANR.

OCTOBER 04, 2007

[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

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*Judicial propriety:*

*Summoning of bureaucrats—Delay of 25 days in filing appeal by Government—High Court summoning the Law Secretary and Chief Secretary—Propriety of—Held: Not proper—Such summoning of senior Government officials to be done only in rare and exceptional case when there are compelling circumstances to do so and not in a routine manner—Judicial restraint—Practice and procedure.*

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The appellant-State had filed an appeal and an application for condoning delay of 25 days in filing appeal on the ground that there was shortage of staff including stenographers in the office of Public Prosecutor.

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The High Court by impugned order directed the Chief Secretary and Law Secretary of the State Government to be personally present to apprise the Court about effective steps taken by them for providing sufficient staff to the office of Government Pleader/Public Prosecutor. Aggrieved appellant-State filed the present appeal.

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Allowing the appeal, the Court

HELD: 1. The High Court was totally unjustified in summoning the Chief Secretary and Law Secretary merely because there was a delay of 25 days in filing the appeal. [Para 4] [534-A, B]

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2. The High Court has power to summon these officials, but that should be done in very rare and exceptional cases when there are compelling circumstances to do so. Such summoning orders should not

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A be passed lightly or as a routine. [Para 7] [534-F]

3. Judges should have modesty and humility. They should realize that summoning a senior official, except in some very rare and exceptional situation, and that too for compelling reasons, is counter productive and may also involve heavy expenses and valuable time of the official concerned. [Para 8] [534-G, H]

4. The judiciary must have respect for the executive and the legislature. Judges should realize that officials like the Chief Secretary, Secretary to the government, Commissioners, District Magistrates, senior police officials etc. are extremely busy persons who are often working from morning till night. No doubt, the ministers lay down the policy, but the actual implementation of the policy and day to day running of the Government has to be done by the bureaucrats, and hence the bureaucrats are often working round the clock. If they are summoned by the Court they will, of course, appear before the Court, but then a lot of public money and time may be unnecessarily wasted. Sometimes High Court Judges summon high officials in far off places like Director, CBI or Home Secretary to the Government of India not realizing that it entails heavy expenditure like arranging of a BSF aircraft, coupled with public money and valuable time which would have been otherwise spent on public welfare. [Para 9] [535-A, B, C]

5. Hence, frequent, casual and lackadaisical summoning of high officials by the Court cannot be appreciated. The Court is constrained to make these observations because in large number of cases where such orders for summoning of high officials are being passed by the High Courts, it is nothing but for the ego satisfaction of the Judge.

[Para 10] [535-D, E]

6. This does not mean that in no circumstances should an official be summoned by the Court. In some extreme and compelling situation that may be done, but on such occasions also the senior official must be given proper respect by the Court and he should not be humiliated. Such senior officials need not be made to stand all the time when the hearing is going on, and they can be offered a chair by the Court to sit. They

**need to stand only when answering or making a statement in the Court. The senior officials too have their self-respect, and if the Court gives them respect they in turn will respect the Court. Respect begets respect.** [Para 11] [535-F, F, G]

**7. There was no occasion or reason for the learned Judge to summon the Chief Secretary or the Law Secretary by the impugned order. If the learned Judge was concerned about the lack of enough Stenographers in the office of the Public Prosecutor he could have called the Advocate General or Govt. Advocate to his chamber and have asked him to convey the Court's displeasure to the government, but there was no need to summon the Chief Secretary or Law Secretary.** [Para 13] [534-D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1338 of 2007.

From the Judgment and final Order dated 11.4.2007 of the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 13747 of 2005 in Criminal Appeal No. 728 of 2005.

Hemantika Wahi, Pinky and Shivangi for the Appellant.

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.** 1. Leave granted.

2. This appeal has been filed against the impugned interim order dated 11.4.2007 of the Gujarat High Court in Criminal Miscellaneous Application No. 13747/2005 in Criminal Appeal No. 728/2005.

3. A perusal of the impugned interim order shows that a Criminal Appeal was filed with a delay of 25 days. The learned Judge of the Gujarat High Court (Hon'ble R.S. Garg, J.) on the application for condonation of delay in filing the appeal passed the impugned order directing the Chief Secretary and Law Secretary of the Gujarat government to be personally present before him on 20.4.2007 "so that the Court may have a direct dialogue with them that what effective steps they are taking to provide sufficient staff to the office of the Government Pleader/Public Prosecutor

A and to avoid delay at every stage". It may be mentioned that the reason given for the delay of 25 days was the shortage of staff including stenographers in the office of the Public Prosecutor.

B 4. In our opinion, the learned Judge of Gujarat High Court was totally unjustified in summoning the Chief Secretary and Law Secretary merely because there was a delay of 25 days in filing the appeal. It may be mentioned that the same Hon'ble Judge (Hon. R.S Garg, J.) in several other cases also summoned the Chief Secretary to appear before him personally. Thus, in Special Civil Application Nos. 13969/1993 and 6896/1993 titled *Gujarat Hotels Ltd. & Ors. v. State of Gujarat & Ors.*, dated 18.1.2007 he summoned the Chief Secretary to appear before him personally. That case related to an incentive scheme of the State government for attracting new entrepreneurs.

C 5. In another case, Special Civil Application No. 8209/1998 titled *D. Gujarat Revenue Tribunal v. A.K. Chakraborty, IAS*, the Bench of Hon'ble R.S. Garg and Hon'ble M.R. Shah, JJ. by an order dated 28.2.2007 ordered the Chief Secretary to be personally present on 6.3.2007 "so that the Court may discuss the niceties with him and may ask him certain questions hovering in the mind of the Court".

E 6. A large number of cases have come up before this Court where we find that learned Judges of various High Courts have been summoning the Chief Secretary, Secretaries to the government (Central and State), Director Generals of Police, Director, CBI or BSF or other senior officials of the government.

F 7. There is no doubt that the High Court has power to summon these officials, but in our opinion that should be done in very rare and exceptional cases when there are compelling circumstances to do so. Such summoning orders should not be passed lightly or as a routine or at the drop of a hat.

G 8. Judges should have modesty and humility. They should realize that summoning a senior official, except in some very rare and exceptional situation, and that too for compelling reasons, is counter productive and may also involve heavy expenses and valuable time of the official

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concerned.

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9. The judiciary must have respect for the executive and the legislature. Judges should realize that officials like the Chief Secretary, Secretary to the government, Commissioners, District Magistrates, senior police officials etc. are extremely busy persons who are often working from morning till night. No doubt, the ministers lay down the policy, but the actual implementation of the policy and day to day running of the government has to be done by the bureaucrats, and hence the bureaucrats are often working round the clock. If they are summoned by the Court they will, of course, appear before the Court, but then a lot of public money and time may be unnecessarily wasted. Sometimes High Court Judges summon high officials in far off places like Director, CBI or Home Secretary to the Government of India not realizing that it entails heavy expenditure like arranging of a BSF aircraft, coupled with public money and valuable time which would have been otherwise spent on public welfare.

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10. Hence, frequent, casual and lackadaisical summoning of high officials by the Court cannot be appreciated. We are constrained to make these observations because we are coming across a large number of cases where such orders summoning of high officials are being passed by the High Courts and often it is nothing but for the ego satisfaction of the learned Judge.

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11. We do not mean to say that in no circumstances and on no occasion should an official be summoned by the Court. In some extreme and compelling situation that may be done, but on such occasions also the senior official must be given proper respect by the Court and he should not be humiliated. Such senior officials need not be made to stand all the time when the hearing is going on, and they can be offered a chair by the Court to sit. They need to stand only when answering or making a statement in the Court. The senior officials too have their self-respect, and if the Court gives them respect they in turn will respect the Court. Respect begets respect.

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12. It sometimes happens that a senior official may not even know

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- A about the order of the High Court. For example, if the High Court stays the order of the Collector of suspension of a class-III or class IV employee in a government department, and certified copy of that order is left with the Clerk in the office of the Collector, it often happens that the Collector is not even aware of the order as he has gone on tour and he may come
- B to know about it only after a few days. In the meantime a contempt of court notice is issued against him by the Court summoning him to be personally present in Court. In our opinion, this should not be readily done, because there is no reason why the Collector would not obey the order of the High Court. In such circumstances, the Court should only request
- C the government counsel to inform the concerned Collector about the earlier order of the Court which may not have been brought to the notice of the Collector concerned, and the High Court can again list the case after a week or two. Almost invariably it will be found that as soon as the Collector comes to know about the stay order of the High Court, he orders
- D compliance of it.

13. In the present case, we find no occasion or reason for the learned Judge to summon the Chief Secretary or the Law Secretary by the impugned order. If the learned Judge was concerned about the lack of enough Stenographers in the office of the Public Prosecutor he could have

E called the Advocate General or Govt. Advocate to his chamber and have asked him to convey the Court's displeasure to the government, but where was the need to summon the Chief Secretary or Law Secretary ? Hence, we set aside the impugned interim order dated 11.4.2007 and condone

F the delay of 25 days in filing the appeal before the High Court. The High Court may now proceed to hear the Criminal Appeal in accordance with law. The appeal is allowed.

14. The Secretary General of this Court is directed to circulate a copy of this judgment to the Registrar Generals/Registrars of all the High

G Courts, who shall circulate copies of the said judgment to all Hon'ble Judges of the High Courts.

D.G.

Appeal allowed.