

F.No. PA/Secy(Law)/Coord/2010
अंडमान तथा निकोबार प्रशासन
Andaman & Nicobar Administration
सचिवालय **Secretariat**

Port Blair, dated the 15th June, 2010

As desired by the Chief Secretary, a copy of Office Memorandum No.29(2)/2010-Judl dated 3.6.2010, together with copy of judgement dated 4.10.2007 passed by Hon'ble Apex Court in appeal (CRL) 1338 of 2007 involving State of Gujarat -VS- Turabali Gulam Hussain Hirani and others is furnished herewith for information and future reference.

P. Adhikari
15.6.10.
(P.K. Adhikari)
Secretary (Law)

All Principal Secretaries

All Commr-cum-Secretaries/Secretaries

Spl. Secretaries. / Jt. Secretary

All HoDs

All Deputy Secretaries/Asst. Secretaries

Copy to Sr. PS to CS for the kind information of the Chief Secretary

मुख्य सचिव का गोपनीय कक्ष
आ.डा.सं.: 3396
दिनांक: 14/6/2010

F. No. 29(2)/2010-Judl.
Government of India
Ministry of Law & Justice
Department of Legal Affairs
Judicial Section

सचिव (विधि) का निजी अनुभाग
Personnel Section of Secretary (Law)
प्रा.व. प्रे.सं. /R D No. 1528
दिनांक./Date 15/6/10

Shastri Bhawan, New Delhi
Dated the 3rd June, 2010.

OFFICE MEMORANDUM

Subject: Regarding Supreme Court's Judgement on personal appearance of officers before the Court.

The undersigned is directed to refer to the Cabinet Secretariat's I.D. Note No.403/1/2/2009-TS dated the 16th April, 2010 on the above-mentioned subject and to circulate a copy of the judgement dated the 4th October, 2007 to all Ministries and Departments of Government of India.. The said judgement can be made use of as and when the occasion demands by the said Ministries/Departments.

This issues with the approval of the Competent Authority.

(Ashok Kumar)
Addl. Legal Adviser
Tele No. 2338 6763

To

1. All Ministries/Departments to the Government of India.
2. Chief Secretaries of all States/Administrators of Union Territories.
3. All Law Officers as per list.
4. P.S. to ML&J/P.S. to Adviser to ML&J/P.S. to Law Secretary/P.S. to Legislative Secretary/P.S. to J.S.(A).
5. The Central Agency Section/Litigation (High Court/Lower Court) Sections.
6. The In-charge, Branch Secretariat, Mumbai/Kolkata/Chennai/Bangalore.

Ashok Kumar
Addl. Legal Adviser

circulate to
all lawyers / MODs
14/6
S.S.
Secy/Law
DS(Law)

CASE NO.:
Appeal (cri.) 1338 of 2007

PETITIONER: State of Gujarat

RESPONDENT: Turabali Gulamhussain Hirani & Anr

DATE OF JUDGMENT: 04/10/2007

BENCH: A.K. Mathur & Markandey Katju

JUDGMENT: J U D G M E N T

CRIMINAL APPEAL NO. 1338 OF 2007
(Arising out of Special Leave Petition (Cri) No. 2252 of 2007)

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 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.
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. & others vs. State of Gujarat & others 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.
5. In another case, Special Civil Application No. 8209/1998 titled Gujarat Revenue Tribunal vs. 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".
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.
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.

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 concerned.

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.

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.

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.

12. It sometimes happens that a senior official may not even know 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 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 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 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 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 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 Courts, who shall circulate copies of the said judgment to all Hon'ble Judges of the High Courts.