

(1982) 03 GUJ CK 0012

In the Gujarat High Court

Case No : Special Civil Application No. 3613 of 1981

Mahesh Harilal Khamar

APPELLANT

Vs

B.N. Narasimhan and Another

RESPONDENT

Date of Decision : 03-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Gujarat Agricultural Produce Markets Act, 1963 — Section 27(5)

Limitation Act, 1963 — Section 29, 5

Citation : AIR 1982 Guj 298 : (1982) GLH 700 : (1982) 2 GLR 124

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Advocate : M.B. Gandhi, for the Appellant; A.J. Patel, Asst. Govt. Pleader and K.G. Vacherie, for B.B. Oza, for the Respondent

Judgement

1. This petition raises a short question about the period of limitation for filing an appeal before the Director of Agricultural Marketing and Rural Finance, respondent No. 1 herein, under the provisions of Section 27, sub-sec (5) of the Gujarat Agricultural Produce Markets Act, 1963, hereinafter, referred to as the "Act". It also raises the question as to whether respondent No. 1 has the power and authority to condone the delay in preferring an appeal before him. In order to appreciate the nature of controversy posed for my consideration in the present petition, it is necessary to have a look at few relevant facts.

2. The petitioner had applied for grant of licence as General Commission Agent for the year 1980-81. The said application was given to respondent No. 2 Market Committee which is registered u/s 9 of the Act and which is having its office in the city. Up to April, 1980 the wholesale business in the vegetables was carried on at Bhagubhai's Vanda situated in Dhalgarvad, in the city. The said wholesale market has been shifted to the new market situated outside Jamalpur gate known as "Sardar Patel Market". The petitioner had a licence of General Commission Agent at the time when the wholesale business was carried on at Bhagubhai's Vanda. As stated above, the petitioner had applied for grant of a

fresh licence as General Commission Agent for the year 1980-81 to the respondent No. 2 Market Committee. u/s 27, sub-section (1) of the, Act the concerned Market Committee subject to the rules made in that behalf can grant or renew a general licence or a special licence for the purpose of any specific transaction or transactions to a trader, general commission agent, broker, weighman, surveyor, warehouseman or any person to operate in the market area or part thereof, or after recording its reasons therefor, refuse to grant or renew any such licence. The petitioner had accordingly given his application to the 2nd respondent invoking its power u/s 27(1) for granting the said licence to the petitioner. The said 2nd respondent Market Committee by its resolution passed at its meeting on 25th April, 1981 refused the petitioner's prayer for grant of a licence for the year 1980-81 on the ground that he had violated the byelaws of the Agricultural Produce Market Committee and the conditions of licence held by him. I am not at all concerned with the merits of the said refusal and hence, I do not dilate on that question any further. The decision of the 2nd respondent Market Committee refusing to grant the requisite licence to the petitioner for the year 1980-81 was communicated to the petitioner by a letter of the Secretary of the Market Committee dated 6-5-1981. It appears that the said letter was received by the petitioner on 8-5-1981. The aforesaid order of the second respondent refusing to grant the requisite licence to the petitioner as General Commission Agent is appealable to the first respondent Director under S. 27(5) which provides that any person aggrieved by an order refusing to grant or renew a licence or suspending or cancelling any licence may, appeal within thirty days from the date of the communication of the order to him. Once an order was made by the Market Committee under the Act as in the present case, it becomes appealable to the respondent No. 1 herein within 30 days from its communication to the petitioner. Accordingly the normal period of limitation of 30 days would have expired on 7-6-81, and by that time the petitioner was required to prefer an appeal before the first respondent Director of Agricultural Marketing and Rural Finance, but in the meanwhile the petitioner preferred a writ petition being Civil Application No. 1844 of 1981 on 19th May, 1981 in this High Court. He challenged the decision of the second respondent Market Committee refusing to grant him the requisite licence for the year 1980-91 and he also challenged some of the provisions of the Gujarat Agricultural Produce Markets Act and the Rules. This petition came to be dismissed as withdrawn on 13th July, 1981, before a Division Bench of this Court. B. J. Divan, C. J. and N. H. Bhatt, J., allowed the petitioner to withdraw his aforesaid petition on 13th July, 1981. Notice was ordered to be discharged but. the ad interim relief granted on 22-5-1991 was allowed to continue for two weeks from 13-4-1981 to enable the petitioner to approach the appellate authority. The aforesaid order of this Court is placed at Annexure "A" to the petition. This order clearly postulates that the petitioner's aforesaid writ petition was not entertained by this Court as the petitioner was relegated to the alternative remedy of appeal to the first respondent Director and two weeks, time was given to the petitioner to approach the appellate authority, during which time ad interim relief was extended.

Thereafter the petitioner preferred the statutory appeal provided u/s 27(5) of the Market Act before the first respondent on 21st July, 1981 i.e. within 8 days of the withdrawal of his petition before this Court.

3. When this appeal came up for hearing before the first respondent, an objection was raised on behalf of the Market Committee that the appeal was barred by limitation. On behalf of the petitioner it was contended before the first respondent Director that he was all throughout agitating the same question about the legality of the order of the Market Committee refusing to grant the requisite licence to him for the year 1980-81 by preferring writ petition in the High Court and when the High Court refused to entertain the petition on the ground that the petitioner had alternative remedy of appeal, he preferred appeal before the Respondent No. 1 Director and consequently no question of limitation would arise. But in any case, if appeal is found to be barred by limitation the delay deserved to be condoned in the interest of justice. A contention was raised on behalf of the Market Committee to the effect that Section 5 of the Limitation Act would not apply to the proceedings before the first respondent Director and hence the first respondent will have no jurisdiction to condone the delay. This contention was repelled by the first respondent by holding that Section 5 of the Limitation Act would be applicable on account of the fact that Section 23(2) of the Limitation Act 1963 and the provisions of Sections 4 to 24 of the Limitation Act would apply to any special law which provides a period of limitation different from the one that was provided in the Limitation Act that as Gujarat Agricultural Produce Market AU was providing for a different period of limitation, it was a special law within the meaning of Section 29(2) of the Act and consequently, the provisions of Section 5 of the Limitation Act did apply, but thereafter the first respondent curiously held that the petitioner had made out no case whatsoever for condoning the delay and, therefore, dismissed the appeal as time barred. The aforesaid order of the first respondent is dated 31st August, 1981. It has brought the dissatisfied petitioner to this Court by way of the present proceedings under Article 226 of the Constitution for issuance of a suitable writ for quashing and setting aside the impugned appellate order of the Director at Annexure "B" to the petition. The petitioner has also prayed for a writ of mandamus directing the respondent No. 2 Market Committee to grant licence to the petitioner for the year 1980-81. But it is obvious that if the petitioner succeeds in getting his first prayer regarding quashing of the impugned appellate order Annexure "B" granted, the appeal will have to be sent back to the first respondent for decision on merits. Consequently, the said decision of the Appellate authority cannot be pre-empted by seeking the grant of any final relief at this stage as prayed for in prayer "B" of the petition. I will have therefore to consider the main and the only relevant question which is posed for my consideration in the present proceeding as to whether the appeal preferred before the first respondent by the petitioner could have been dismissed as time barred or was required to be decided on merits.

4. The aforesaid resume of facts and events leaves no room for doubt that the

petitioner was all throughout actively prosecuting his grievance against the order of the Market Committee by which it refused to grant him licence as General Commission Agent for the year 1980-81. Even by a remotest chance he cannot - be alleged to have indulged in inaction or indolence. It is true that within 30 days instead of going to the first respondent in appeal he straightway came to this Court for getting the very relief for quashing and setting aside the decision of the second respondent Market Committee refusing to grant him the requisite licence and this Court ultimately found that the petitioner was required to be relegated to the alternative remedy of appeal.

5. Under these circumstances, two questions would squarely arise for consideration viz., (1) whether the first respondent could invoke the powers u/s 5 of the Limitation Act and (2) whether this was a fit case in which he ought to have entertained the appeal on merits by condoning the delay on the part of the petitioner in preferring appeal before him. So far as the first question is concerned, the first respondent has already held in favour of the petitioner namely that Section 5 of the Limitation Act can be pressed in service by the petitioner for getting the delay in preferring the appeal condoned. But Mr. Vakharia the learned Advocate appearing for respondent No. 2 Market Committee submitted before me that the aforesaid view of the first respondent is patently erroneous. Mr. Vakharia contended that Section 5 of the Limitation Act 1963 can apply to courts and court proceedings as its very language suggests and that the first respondent-Director of Agricultural Marketing and Rural Finance though acting as an appellate authority was not a Court *stricto sensu* and consequently Section 5 of the Limitation Act could never apply to the appellate proceedings before him as envisaged in Section 27(5) of the Act. In order to appreciate the aforesaid contention of Mr. Vakharia it is first necessary to have a look at the necessary statutory provisions. Section 29(2) of the Limitation Act, 1963 provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in -sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which, they are not excluded by such special. For the applicability of S. 29(2) of the Limitation Act what is required to be found out is whether any special or local law prescribes a different period of limitation for any suit appeal or application. It cannot be gainsaid "that Section 27(5) of the Gujarat Agricultural Produce Market Act 1963 does provide a period of 30 days for preferring appeal and to that extent the Agricultural Produce Market Act 1963 is a special law providing for different period of limitation. The period of 30 days for preferring Appeal u/s 27(5) of the Act is certainly a period different from the one prescribed in the Schedule of the Limitation Act, 1963 which does not provide any period for preferring any such appeal. Therefore, it must be held that special law namely the Gujarat Agricultural Produce Market Act, 1963 does

provide a different period of limitation. Once that conclusion is reached, the consequences laid down by Section 29(2) must follow. Accordingly Section 3 of the Limitation Act would automatically apply as if such period was prescribed by the Schedule of the Limitation Act. Now it is necessary to note that Section 3(1) of the Limitation Act states that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. Thus the appeal preferred by the petitioner beyond 30 days would be liable to be dismissed on the ground of limitation even though such a defence may not have been urged, as laid down by Section 3(1) of the Act. It is obvious that when special law provides for the period of limitation different from that provided by the Limitation Act and once Section 3 of the Limitation Act gets attracted by virtue of Section 29(2) to the proceedings before the concerned authority acting under the Special Law which has to enforce the period of limitation, said authority will have to apply the provisions of Section 3 of the Limitation Act to the proceedings presented before it under the provisions of the concerned special law or the local law as the case may be. It cannot be disputed for a moment that 30 days" period of limitation is provided for appeal to the first respondent u/s 27(5). Therefore, it is for the first respondent to apply Section 3 of the Limitation Act and to dismiss the concerned appeal if it is found to be barred by time. "If the injunction prescribed by Section 3(1) has to operate by virtue of Sec. 29(2) the said injunction must necessarily bring in its wake all the rest of the provisions of the said sub-section (1) of Section 3. As stated above, Section 3(1) of the Limitation Act itself provides that its operation is subject to Secs. 4 to 24. Consequently if the provisions of Sections 4 to 24 are made applicable, they would necessarily override and superimpose themselves upon, the operation of Section 3(1) of the Limitation Act. In other words, the legislative mandate u/s 3(1) has to be read subject to Ss. 4 to 24 following the said section, S. 5 is necessarily included in the conspectus of Sections 4 to 24. It is trite to say that if Section 3 applies to the first respondent acting u/s 27(5) of the Act then it must follow as a necessary corollary that Section 5 of the Limitation Act would equally apply by virtue of S. 29(2) read with of S. 3(1) of the Limitation Act. It cannot be urged for a moment that Section 3(1) of the Limitation Act would apply but Section 5 thereof would not apply to the first respondent's proceedings because he is not a Court. While Section 29(2) is attracted the entire machinery of Sections 3 to 24 of the Limitation Act gets imported and would automatically apply to the proceedings before the concerned authorities exercising powers under the given special or local law. If the concerned authority under the given special or local law has to enforce the period of limitation for any appeal or application before such authority, implicit in the power would be the power to condone the delay which would get imported as part and parcel of the entire machinery of Sections 3 to 24 of the Limitation Act that would apply by virtue of Section 29(2) of the Limitation Act to such proceedings before the concerned authorities acting under the special or local law. This is the logical effect of the applicability of Section 29(2) of the Limitation Act and hence the

question whether the concerned authority is a Court within the strict meaning of the term as envisaged by the Limitation Act itself, would necessarily pale into insignificance.

6. Mr. K, G. Vakharia, the learned Advocate appearing for the respondent No. 2 Market Committee heavily relied upon the decision of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, , to support his contention that Section 5 of the Limitation Act would apply only to proceedings before a Court as such and not before any other statutory authority exercising statutory powers. In order to appreciate the nature of the controversy before the Supreme Court in the aforesaid case and the ratio of the said decision, it is necessary to note at the outset the relevant facts which came up for consideration before the Supreme Court in the aforesaid decision. The respondent before the Supreme Court had filed a petition under Sections 10 and 16(5) of the Telegraph Act 1W read with Section 51 of the Indian Electricity Act 1910 claiming compensation against Kerala Electricity Board which was the appellant before the Supreme Court. The Kerala Electricity Board was constituted u/s 5 of the Electricity (Supply) Act, 1948. The Board had cut and removed some trees standing on the property of the respondent for the purpose of laying electric line from Calicut to Cannanore. The Board assessed the compensation at Rs. 1619.90. Being aggrieved by the decision of the Board the respondent before the Supreme Court had filed a petition before the District Judge, Tellicherry u/s f6 (3) of the Telegraph Act, 1885 claiming an enhanced compensation of Rs. 19,367.60. The Kerala Electricity Board raised several objections. One of the objections was that the petition before the District Judge, Tellicherry was barred by limitation under Article 137 of the Limitation Act. The Board had contended that the notice intimating the fixing of the compensation was served on March 4, 1969, to the concerned respondents and, therefore, the concerned respondents were required to file their petition for compensation before the District Judge under Article 137 of the 1963 Limitation Act within three years from the accrual of the right to apply and their petition which was filed beyond three years of 4th March, 1969, was barred by limitation, The respondent contended before the District Judge in that case that Art. 137 of the 1963 Limitation Act did not apply to applications to the District Judge under the Telegraph Act but that contention was negated by the learned District Judge and the respondent's application for compensation was dismissed as time barred. The respondent carried the matter in revision to the High Court of Kerala and also applied for condonation of delay in filing the revision petitions in the High Court of Kerala. The High Court condoned the delay in filing the revision application and thereafter set aside the order of the District Judge and remitted the matter back to the Court for disposal in accordance with law. The said decision Of the Kerala High Court was challenged before the Supreme Court by the Electricity Board. The contention of the respondent before the Supreme Court was that Article 137 of the 1963 Limitation Act would not apply to proceedings before the District Judge u/s 16(3) of the Telegraph Act. They relied upon the earlier decision of the Supreme Court

in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , which had taken the view that Art. 137 of the Limitation Act 1963 would be confined to applications contemplated in CPC only. The said earlier view of the Supreme Court was in terms dissented from by a larger Bench of the Supreme Court In Kerala State Electricity Board (supra). It was held in the aforesaid decision that Article 137 of the Limitation Act 1963 would apply to any petition or application filed under any Act to a Civil Court. The petition in that case before the Supreme Court was to the District Judge as a Court, The petition was one contemplated by the Telegraph Act for Judicial decision. Therefore, that petition squarely fell within the scope of Article 137 of the 1963 Limitation Act and consequently three years, period of limitation was applicable, and hence the respondent's application for enhanced compensation was barred by limitation. While taking the aforesaid view A. N. Ray, C. J., speaking for the Supreme Court observed that any other application as mentioned in Article 137 of the Limitation Act would be petition or any application under any Act, But it has to be an application to a Court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when Court is closed and extension of prescribed period if applicant or the appellant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application during such period. Article 137 will apply to any petition or application filed under any Act to a Civil Court. It is not confined to applications contemplated by or under the Civil P. C. only. Mr. Vakharia placed strong reliance on the aforesaid observation of Ray C. J., and submitted that the Supreme Court has ruled that Sections 4 & 5 of the Limitation Act contemplate applications to Court only and, therefore in case of a quasi-judicial authority functioning under any statute, if it is not a Court as such, application of Sections 4 and 5 of Limitation Act to such authority would be squarely ruled out. It is not possible for me to accept the aforesaid contention of Mr. Vakharia. It may be noted that in the aforesaid decision before the Supreme Court no question of applicability of Section 29(2) ever arose for consideration. The Supreme Court was not called upon to decide the question as to whether an authority functioning under the Statute when called upon to decide a matter in a quasi-judicial manner and when enjoined by the Statute to enforce the given period of limitation can have the power to condone delay in a given proper case. In such a contingency the applicability of Section 29(2) of the Limitation Act would clearly be attracted. The Supreme Court was not concerned with any such contingency. It was concerned with the applicability of Article 137 of the Limitation Act which is found in the schedule to the Limitation Act itself. It is therefore, obvious that the Supreme Court was not called upon to consider the further question as to whether on the applicability of Section 29(2) of the Limitation Act a statutory authority exercising quasi-judicial functions and powers under the Special Law while enforcing the period of limitation, can 5 of the Limitation Act via Section 29(2) Of the Act. It is pertinent to note that under Article 137 of the Limitation Act no question of applicability, of Section.

29(2) would ever arise for consideration. The case before the Supreme Court was one in which the period of limitation was directly provided by the Limitation Act itself as found in Article 137 of its schedule. In such a case, Section 5 or for that matter any other sections of the Limitation Act would get attracted by the mere applicability of the Limitation Act itself and not via S. 29(2) through which any special or local law can get equipped with the machinery provided by Sections 4 to 24 read with Section 3 of the Limitation Act. It is therefore not possible to accept the contention of Mr. Vakharia that the Supreme Court has held that even in a case in which a statutory authority under whose period exercises quasi judicial function Special Law or local law and such an authority enforces the of limitation for filing appeals or applications under such authority unless such, cannot invoke section 5 of the Limitation Act. Such question not having been posed for the consideration of the Supreme Court, the ratio of the Supreme Court decision in Kerala Electricity Board's case (supra) cannot by implication be extended to cover cases of present type. It is obvious that once Article 137 of the Limitation Act directly applies to a given proceedings before a Court, the applicability of Ss. 4 and 5 in the form in which they are couched would squarely arise for consideration. In that light the aforesaid ratio of the Supreme Court decision will have to be understood and appreciated. It is further pertinent to note that before the Supreme Court there was no controversy or contest as to whether the District Judge exercising his powers u/s 16(3) of the Telegraph Act, 1885 was a Court or not. On the contrary, it was an admitted position that the District Judge was a Court. The Supreme Court has also in terms held in para 22 of the aforesaid judgment that the petition was filed before the District Judge as a Court. The petition was one contemplated by the Telegraph Act for judicial decision and hence the petition was an application falling within the scope of Article 137 of the 1963 Limitation Act. Under these circumstances, no real assistance can be derived from the Supreme Court decision relied upon by Mr. Vakharia. As already discussed earlier by me, once the question of applicability of Section 5 arises in the context of the operation of Section 29(2) of the Limitation Act to any special or local law, the principles of Sections 4 to 24 get attracted by necessary implication by the very force of Section 29(2). Under these circumstances when a Statutory authority having quasi judicial functions enforces the given period of limitation under a special or local law as the case may be, by the combined operation of Section 29(2) read with Sections 4 to 24 of the Limitation Act, Section 5 of Limitation Act clearly gets attracted to such proceedings before the statutory authority exercising quasi judicial powers under the" concerned special or the local statute.

7. As shown above, the aforesaid Supreme Court judgment nowhere touches this question and hence no assistance can be derived by Mr. Vakharia from the aforesaid decision. On the contrary on this very point there is a direct judgment of a Division Bench of this Court. In Special Civil Appeal. No. 404 of 1967 decided on 29th August, 1967, by the Division Bench of this High Court consisting of P. N. Bhagwati Ag. C. J., as he then was, and Vakil, J., as he then was, a similar

question was posed for their consideration. The Special Land Acquisition Officer exercising power u/s 18 of the Land Acquisition Act had refused to make a reference for enhanced compensation on the ground that the application for reference was received beyond time prescribed by Section 18 of the Land Acquisition Act. The question that arose in the aforesaid context was as to whether the Land Acquisition Officer being the statutory authority exercising his powers under S. 18 of the Land Acquisition Act has powers to condone the delay on the part of the claimant in making the reference application before it. The Special Land Acquisition Officer rejected the application on the ground that he had no authority to condone the delay and once the time prescribed by clause (1) of the proviso to Section 18 of the Land Acquisition Act expired nothing further could be done in the matter. The aforesaid view of the Special Land Acquisition Officer was up-turned by the High Court in the aforesaid decision. Vakil, J., speaking for the Division Bench held that Section 18 of the Land Acquisition Act is a special or local law prescribing a period of limitation different from the period prescribed by the Schedule and as none of Sections 4 to 24 is expressly excluded by the Land Acquisition Act, there was no manner of doubt that Section 29(2) of the Limitation Act would apply and consequently, Section 5 of the Limitation Act which authorises the Court to condone the delay in certain circumstances would apply to the application made to the Special Land Acquisition Officer and he has the authority to condone the delay and extend the period if he is satisfied that the concerned applicant has sufficient cause for not preferring the application within the period prescribed under the proviso of Section 18. For , coming to the aforesaid conclusion the Division Bench placed reliance on the decision of the Supreme Court in the case of Kaushalya Rani Vs. Gopal Singh, . In the aforesaid Supreme Court decision Section 417 of the Criminal P. C. was held to be a special law which prescribed a period of limitation different from the period prescribed by the Schedule and therefore it came within the ambit of Sec. 29(2) of the Limitation Act. The principle laid down by the Supreme Court was made applicable to the facts of the case before the Division Bench. The aforesaid decision of the Division Bench clearly shows that the provisions of Section 5 were made applicable via Section 29(2) of the Limitation Act to the proceedings before the statutory authorities acting under the, Special Laws when they were called upon to apply a given period of limitation as prescribed by the concerned statute. It is obvious that the Land Acquisition Officer functioning as Collector under the Land Acquisition Act was not acting as a Court in the full sense of the term and still Section 5 of the Limitation Act was made applicable to the proceedings before him wherein he had to merely offer the amount of compensation of the concerned claimant. The ratio of the Division Bench decision therefore squarely applies to the facts of the present case and negatives the contention of Mr. Vakharia that Section 5 of the Limitation Act cannot apply through the aid of Section 29(2) of the Limitation Act to a proceeding before the Statutory authorities on the ground that they are not Courts in the strict sense of the term. Mr. Vakharia in this connection submitted that no argument was made before the Division Bench of this Court in the

aforesaid decision that the Special Land Acquisition Officer is not a Court. That really makes no difference, so far as the applicability of the ratio of the aforesaid Division Bench Judgment is concerned. It may be noted at this stage that the aforesaid Division Bench judgment has been followed consistently by this Court in a series of later judgments of different Division Benches and as I have already shown above, while applying the provisions of Section 29(2) to the proceedings of a given statutory authority functioning under the Special Law, provisions of Section 29(2) would apply via Sec. 29(2) and hence the question whether that statutory authority acts as a Court in its strict sense or not, does not remain a german consideration at all. It must therefore be held that first respondent Director was right when he took the view that Section 29(2) of the Limitation Act would apply to the facts of the present case by virtue of Section 29(2) of the Limitation Act.

8. Then remains the further question as to whether the respondent No. 1 was justified in throwing out the appeal of the petitioner as time barred and in refusing to condone the delay. Mr. Vakharia submitted that the first respondent on the facts of this case had exercised its discretion in not condoning the delay and this Court exercising powers under Article 226 or 227 of the Constitution would not be justified in interfering with the said discretion exercised by the respondent No. 1. If the matter would have stood in the realm of mere discretion exercised by the respondent No. 1. the situation would have been different, but in the present case it has been found that the first respondent has arbitrarily and without applying his mind to the main question before him, has thrown out the appeal as time barred and has refused to condone the delay without considering all the relevant facts on the record of this case. The sequence of events as chronologically mentioned in the earlier part of this judgment leaves no room for doubt that the petitioner was agitating his grievance against- the order of the second respondent Market Committee all throughout till he filed his appeal before the first respondent. It may be recapitulated that the order of the second respondent was communicated to the petitioner on 8th May, 1981. He could have filed his appeal before the second respondent Director within the time prescribed. Instead he came to this Court in revision on 19th May, 1981 by way of Special Civil Application which ultimately was dismissed on the ground of alternative remedy by the Division Bench of this Court on 13th July, 1981. It is thereafter that the petitioner filed his appeal before the first respondent on 25th July, 1981. It must therefore be held that all throughout the petitioner acted vigilantly and pursued his remedy against the order of the second respondent actively and diligently. In view of the aforesaid admitted facts that emerge on the record of this case and especially in view of the decision of the Division Bench of this Court which permitted the petitioner to withdraw his Special Civil Application for pursuing alternative remedy and continued the interim reliefs for two weeks, more from 13th July, 1981, it must be held that the appeal as filed by the petitioner before the first respondent 21st July, 1981 was required to be decided on merits by condoning the delay. Period spent by 19-5-1981 and 13-7-1981

before this Court in Special Civil Application No. 1844 of 1981 was required to be excluded not strictly under S. 14 of the Limitation Act but in the light of Section 14 read with Section 29(2) of the Limitation Act. In any case the said circumstance indicated a strong ground in favour of the petitioner for condoning delay in preferring appeal before the first respondent. This relevant consideration has been by-passed by the first respondent when he arbitrarily and even almost mechanically refused to condone the delay by not giving due consideration to the telltale facts on the record and thus failed to exercise his jurisdiction vested in him u/s 29(2) of the Limitation Act as well as u/s 27 of the Gujarat Agricultural Produce Market Act. It must therefore be held that the first respondent had committed a patent error of law in not condoning the delay in exercise of his judicial discretion in the light of the aforesaid telltale circumstances and in throwing out the appeal of the petitioner as barred by limitation. It must be held that the petitioner had made out sufficient ground for condoning the delay. As the first respondent failed to decide the matter on merits, the order at Annexure "B" is required to be quashed and set aside. The first respondent is directed to restore to his file the said appeal of the petitioner and to decide the same on merits on accordance with law upon hearing the concerned parties after issuing notices to them about the date of hearing. Rule is accordingly made absolute to the aforesaid extent by granting prayer 16 (A) of the petition. There is no question of granting prayer 16 (B) as no such question arises for the decision in this Court aft this stage. Rule is made absolute to the aforesaid limited extent with no order as to costs in the circumstances of the case. As the matter is a long delayed one the first respondent is directed to decide the appeal of the petitioners on merits at the earliest preferably within a period of six weeks from the receipt of writ from this Court aft his end.

9. Order accordingly.