

---

**(1999) 12 GUJ CK 0064**

**In the Gujarat High Court**

**Case No :** Civil Applications No's. 8714 to 8716 of 1999 in First Appeal No's. 4026 to 4028 of 1999 and first Appeal No's. 4026 to 4028 of 1999

State of Gujarat

APPELLANT

Vs

Amrutlal Bapulal Swami

RESPONDENT

---

**Date of Decision :** 28-12-1999

**Acts Referred:**

Law Officers Rules — Rule 132, 133

**Citation :** (1999) 12 GUJ CK 0064

**Hon'ble Judges :** Pradip Kumar Sarkar, J;M.R. Calla, J

**Bench :** Division Bench

**Advocate :** Sudhanshu Patel, A.G.P, for the Appellant; Jitendra Malkan, for the Respondent

**Final Decision :** Dismissed

---

## **Judgement**

M.R. Calla, J.—Heard learned counsel.

2. These three Civil Application seeking condonation of delay of 245 days in filing the First Appeals in each of these three matters were filed

before this court on 6.8.99 whereas the concerned First Appeals had been filed on 14.6.99. First of all there is no explanation whatsoever as to

why the Applications seeking condonation of delay were not filed alongwith the First Appeals when they were filed on 14.6.99 and why the

Applications for condonation of delay were filed in August 1999 i.e. after a period of nearly two months. It was very well known to the applicants

at the time when the Appeals were filed that Appeals were time bared and, therefore, there can not be any justification to say that they were waiting

for the Registry to point out the objection with regard to limitation when the Appeals were delayed by 245 days. According to law, Applications

for condonation of delay are required to be filed alongwith the time barred Appeals.

3. Besides this, we find from the Applications seeking condonation of delay that;-

- (1) Award was passed on 6.4.98.
- (2) Certified copy was applied for on 8.5.98
- (3) Certified copy was ready for delivery on 13.7.98.
- (4) The same was delivered on 18.8.98
- (5) The District Government Pleader sent proposal to file the Appeal on 4.9.98.
- (6) The Registry Branch of Legal Department received the proposal on 7.9.98.
- (7) The concerned Branch received the proposal on 9.9.98.
- (8) The concerned Assistant asked the Clerk for papers and, thereafter, the papers were given to the Assistant on 10.9.98.
- (9) The Assistant then put up the file before the Deputy Secretary to call for the report under Rules 132 and 133 of the Law Officer's Rules from the concerned Administrative Department and the Deputy Secretary agreed to call for the report. On 11.9.98 the said file was sent to Narmada Waters Resources and Water Supply Department for report.
- (10) From 11.9.98 to 24.3.99 i.e. for a period of more than six months the file remained with the Narmada Water Resources and Water Supply Department and the said file was received back on 24.3.99 alongwith the report.
- (11) After the approval of the Deputy Secretary of the Administrative Department, the file was again sent to the Narmada Water Resources and Water Supply Department for required information on 11.5.99.
- (12) The file was received back in the Legal Department on 31.5.99.
- (13) The Assistant prepared a detailed note to file an Appeal and submitted to Deputy Secretary and the decision of the Deputy Secretary was approved by the Secretary & RLA on 1.6.99.
- (14) On 3.6.99 the file was sent to the Minister (Law) who approved the decision of the Legal Department.
- (15) On 4.6.99 the file was received back in Legal Department.
- (16) Draft letter was prepared and sent to the typing section.
- (17) The same was received back from typing section on 14.6.99 and placed before the Deputy Secretary.

(18) After the signature of the Under Secretary, letter was issued to the office of the Government Pleader of the High Court of Gujarat, at

Ahmedabad, who was instructed to file the Appeal and the Appeal was filed on 14.6.99.

4. It is interesting to note that even in the face of the facts, as stated above, it has been stated in para 6 of this Application that there is no inaction

or negligence on the part of the applicants in prosecuting the matter in time. It is a dismal fact that even for the purpose of making the proposal to

file the Appeal, the time was taken from 18.8.98 to 4.9.98 and, thereafter, the matter remained pending with the Narmada Water Resources and

Water Supply Department from 11.9.98 to 24.3.99 i.e. for a period of more than six months, for which there is no explanation worth the name.

Again there is no explanation for the period from 11.5.99 to 31.5.99, as aforesaid.

5. It appears that the respondent - State of Gujarat and its various functionaries do not take due care about the provisions of the Limitation and

whereas liberal view has been taken by this Court in condoning the delay, it has become a matter of routine in the concerned Department to take

the matters as leisurely as they can and since the matters are not taken seriously, the files, in which the Appeals are required to be filed, remain

uncared for and, thereafter, the delay is sought to be condoned on the ground of administrative delay. It appears that the indulgence, which has

been granted for reasons of public interest, is being sought to be misused and abused in ways more than one. If the Court has taken a liberal view

in condoning the delay, that does not mean a sort of encouragement for filing time barred Appeals. Very recently in a judgment (Dt.22.12.99 in

Civil Applications Nos. 5779 to 5786 of 1999 in First Appeals Nos. 1913 to 1920 of 1999) we have already noticed that out of 17885 First

Appeals, 13897 Appeals have been filed time barred during 1995 to 1999 and in the year 1999 itself upto 31.10.99, 4591 Appeals have been

filed time barred before this Court. This is a very sorry state of affairs and the same cannot be encouraged, rather it deserves to be deprecated and

checked. In any case, in the facts and circumstances of the present case, we find that it cannot be said that the applicants were prevented by any

reasonable and sufficient cause from filing the Appeals within time and the manner in which the delay of 245 days has been caused is highly

deplorable and speaks volume of the inaction and negligence on the part of those, who were concerned with the matters and with whom the matters remained pending for unduly long time, for which there has been no explanation whatsoever. One word of "Administrative delay" is not the answer. We may not insist for the explanation of day to day delay and even if there is long delay, the same can be condoned if there are good reasons to show that the party was prevented by any reasonable and sufficient cause. It is not a question of requirement of explanation of delay day to day, but the question is that the matters have been taken up as if the law of limitation does not exist. We are, therefore, constrained to take a serious view of the matter. Not only this, even when the time barred Appeals are filed, care is not taken to file Application for condonation of delay alongwith the Appeal, which is the requirement of law and the application for condonation of delay should be filed alongwith the time barred appeal without waiting for the Registry of the High Court to point out the objection of limitation. In such cases, there is no question of waiting for any objection of limitation to be raised by the Registry. It is the duty of the appellant, who file the time barred Appeal, to see that the application for condonation of delay is accompanied with the time barred Memo of Appeal invariably.

6. We can only express with regrets no less than surprise that the flow of time barred Appeals has been on increase in the year 1999 and instead of decrease there is voluminous increase of time barred Appeals by the State, as has been noticed by us, on the basis of the statement produced by no one else than the Assistant Government Pleader himself in Civil Applications Nos. 5779 to 5786 of 1999 in First Appeals Nos. 1913 to 1920 of 1999 decided on 22.12.99, according to which out of 4793, 4591 time barred Appeals have been by State as against only 152 appeals within time. We are told that the Chief Secretary of State of Gujarat was required to file a report before this court in Civil Application No. 3984/99 in First Appeal No. 553/99 on 19.11.99 and such report dt.9.12.99 was filed on 10.12.99 in the above matter for reasons of delay and action against erring officers. Alas, the things may improve even now!

7. The net result is that these three Civil Applications seeking condonation of delay of 245 days fail and the same are hereby dismissed. Rule is

hereby discharged in each of these three Civil Applications. No order as to costs.

8. Whereas the Applications seeking condonation of delay have been rejected, there is no question of entertaining the First Appeals Nos. 4026 to

4028 of 1999 and all these three First Appeals consequently stand dismissed.

9. However we may observe that whereas these Appeals have been dismissed as not entertained on the ground that the Applications for

condonation of delay of 245 days have been rejected, the orders, which were the subject matter of challenge in these First Appeals, will not be

used as the sole basis for deciding other identical cases by the concerned Court.

Copy of this order may be sent to the Chief Secretary, State of Gujarat, at Gandhinagar.