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मध्यप्रदेश शासन  
सामान्य प्रशासन विभाग  
मन्त्रालय

क्रमांक एफ 11-5/2008/1/9.

भोपाल दिनांक- 3/3/08

प्रति,

समस्त अपर मुख्य सचिव/  
प्रमुख सचिव/सचिव,  
मध्यप्रदेश शासन,  
शासन के समस्त विभाग  
**तमस्त जिलाध्यक्ष,**  
समस्त संभारग्राह्युक्त,  
समस्त कलेक्टर,  
मध्यप्रदेश।

विषय: क्रिमिनल अपील क्रमांक 1338/2007 (उच्च न्यायालयों द्वारा शासन के वरिष्ठ अधिकारियों को अपवाद रूप से न्यायालय में बुलाने संबंधी)।

उपरोक्त विषय में आदेशानुसार भारत सरकार कार्मिक, प्रशासनिक सुधार एवं प्रशिक्षण विभाग का पत्र क्रमांक 14062/48/2007-ए आई एस-111 दिनांक 10 दिसम्बर 2007 एवं उसके साथ संलग्न क्रिमिनल अपील क्रमांक 1338/07 में मान उच्चतम न्यायालय द्वारा पारित निर्णय दिनांक 4.10.2007 की छायाप्रति आवश्यक कार्यवाही हेतु संलग्न प्रेषित हैं।

संलग्न:- उपरोक्तानुसार.

(एस.सी. पाराशर)  
अवर सचिव  
मध्यप्रदेश शासन  
सामान्य प्रशासन विभाग

No. 14062/48/2007-AIS-III  
Government of India  
Ministry of Personnel, Public Grievances and Pension  
Department of Personnel and Training  
\*\*\*\*\*

New Delhi, the 10<sup>th</sup> December, 2007

संख्या प्रवेश संख  
सामान्य प्रशासन विभाग (कक्षा -  
पंजी क्र. 3194/2007  
दिनांक 20-12-2007

To

The Chief Secretaries of All States/UTs

Subject:- Judgement of Hon'ble Supreme Court of India in Criminal Appeal No.1338 of 2007 for exercising the powers of High Courts to summon senior officials in very rare and exceptional cases when there are compelling reasons to do so.

Sir/Madam,

I am directed to forward herewith a copy of the Judgement of Hon'ble Supreme Court of India in Criminal Appeal No.1338 of 2007 for information and appropriate action. The Hon'ble court has decided that the power of the High Courts to summon senior officials of the State Governments should be exercised in very rare and exceptional cases when there are compelling reasons to do so.

Yours faithfully,

(G. C. Pandey)

Under Secretary to the Government of India

Tel: 23092285

Copy to

1. All the Ministries/Departments of the Government of India
2. All Officers of the Department of Personnel and Training

19/12/07

**IN THE SUPREME COURT OF INDIA**

Criminal Appeal No. 1338 of 2007 (Arising out of Special Leave Petition (Crl.) No. 2252 of 2007)

Decided On: 04.10.2007

**State of Gujarat**  
**Vs.**  
**Turabali Gulamhussain Hirani and Anr.**

**Hon'ble Judges:**

A.K. ... and Markandey ..., JJ.

**Subject: Criminal**

**Cases Referred:**

Gujarat Hotels Ltd. and Ors. v. State of Gujarat and Ors. Special Civil Application Nos. 5896 and 13969/1993; Gujarat Revenue Tribunal v. A.K. Chakraborty, IAS Special Civil Application No. 8209/1998

**Disposition:**

Appeal allowed

**Citing Reference:**

\*\*\* Discussed

Gujarat Hotels Ltd. and Ors. v. State of Gujarat and Ors. \*\*\*

Gujarat Revenue Tribunal v. A.K. Chakraborty, IAS \*\*\*

**JUDGMENT**

**Markandey , 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 <http://localhost:49152/nxt/gateway.dll/Manupatra/sc/2001-2003SC/sc2007/s071064.htm?F=templa...> 12/4/2007

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. and Ors. v. State of Gujarat and 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.

5. In another case, Special Civil Application No. 8209/1998 titled 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".

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.

मध्य प्रदेश शासन  
सामान्य प्रशासन विभाग  
मंत्रालय

कमॉक 587/5164/07/9-1  
प्रति,


भोपाल, दिनांक 25/3/2008

<sup>कृष्ण</sup>  
समस्त अपर सचिव / प्रमुख सचिव / सचिव,  
मध्य प्रदेश शासन  
समस्त विभाग  
मंत्रालय, भोपाल ।  
समस्त संभागायुक्त ।  
समस्त विभागाध्यक्ष ।  
समस्त कलेक्टर ।  
समस्त मुख्य कार्यपालन अधिकारी,  
जिला पंचायत ।

विषय:- निवृत्तमान मंत्री से गोपनीय प्रतिवेदन पर मत्तोकन कराये जाने के संबंध में  
मार्गदर्शन ।

कतिपय विभागों द्वारा शासन से इस संबंध में मार्गदर्शन चाहा गया है कि उनके विभाग में पदस्थ अधिकारियों के गोपनीय प्रतिवेदन पर निर्धारित चैनल अनुसार मा० मंत्री जी का मत्तोकन कराया जाना है किन्तु विचाराधीन अवधि के भारसाधक मंत्री वर्तमान में मंत्री के पद पर नहीं हैं । ऐसी स्थिति में क्या वार्षिक गोपनीय प्रतिवेदन पर तत्कालीन मंत्रीजी (निवृत्तमान मंत्रीजी) का मत्तोकन प्राप्त किया जा सकता है अथवा नहीं ? साथ ही क्या उक्त गोपनीय प्रतिवेदन पर वर्तमान मंत्रीजी का मत्तोकन कराया जा सकता है ?

उपरोक्त के संबंध में यह स्पष्ट किया जाता है कि यदि कोई मंत्री अपने पद पर नहीं रहते हैं, तो वे पद छोड़ने के बाद वार्षिक गोपनीय प्रतिवेदन पर मत्तोकन नहीं कर सकते हैं । साथ ही वर्तमान मंत्री जिन्होंने आलोच्य अवधि में संबंधित अधिकारी का कार्य नहीं देखा है, के द्वारा भी कोई टीप वार्षिक गोपनीय प्रतिवेदन में अंकित नहीं की जा सकती है।



(डॉ० अरुणा गुप्ता)

उप सचिव

मध्य प्रदेश शासन

सामान्य प्रशासन विभाग

भोपाल, दिनांक 25/3/2008

पृष्ठकन कमॉक 5164/07/9-1

प्रतिलिपि:-

1- राज्यपाल के सचिव, राजभवन भोपाल ।

- 2- सचिव म0प्र0 विधान सभा भोपाल ।
  - 3- निबंधक, उच्च न्यायालय जबलपुर ।
  - 4- सचिव लोक आयुक्त भोपाल
  - 5- सचिव म0प्र0 लोक सेवा आयोग इन्दौर ।
  - 6- निज सचिव/निज सहायक, मुख्यमंत्री/मंत्री/राज्यमंत्री/म0प्र0 शासन ।
  - 7- मुख्य निर्वाचन पदाधिकारी म0प्र0 भोपाल ।
  - 8- सचिव राज्य निर्वाचन आयोग म0प्र0 भोपाल ।
  - 9 रजिस्ट्रार म0प्र0 राज्य प्रशासनिक न्यायाधिकरण जबलपुर/भोपाल/इन्दौर/ग्वालियर
  - 10 आयुक्त आदिवासी विकास सतपुडा भवन भोपाल
  - 11 अध्यक्ष व्यवसायिक परीक्षा मण्डल/राजस्व मंडल/माध्यमिक शिक्षा मण्डल म0प्र0 भोपाल ।
  - 12 उप सचिव/अवर सचिव, सामान्य प्रशासन विभाग, मंत्रालय भोपाल ।
  - 13 आयुक्त, जन संपर्क संचालनालय, भोपाल ।
  - 14 मुख्य सचिव के स्टाफ आफिसर ।
- की ओर सूचनार्थ एवं आवश्यक कार्यवाही के लिये अंग्रेषित ।

  
उप सचिव

मध्य प्रदेश शासन  
सामान्य प्रशासन विभाग

मध्यप्रदेश शासन  
सामान्य प्रशासन विभाग  
मंत्रालय,

क्रमांक एफ: 11-14/2007/एक/9(सु0 प्र0)

भोपाल, दिनांक 31 मार्च, 2008

प्रति,

शासन के समस्त विभाग,  
अध्यक्ष, राजस्व मंडल, मध्यप्रदेश, ग्वालियर,  
समस्त विभागाध्यक्ष,  
समस्त संभागायुक्त,  
समस्त कलेक्टर,  
समस्त मुख्यकार्यपालन अधिकारी, जिला पंचायत,  
मध्यप्रदेश।

- विषय— प्रत्यायजन एवं विकेंद्रीकरण तथा निर्णय लेने के स्तरों की संख्या में कमी करना।  
संदर्भ— सामान्य प्रशासन विभाग का पत्र क0/11-34/2006/एक/9, भोपाल, दिनांक 22 अप्रैल, 2006

राज्य शासन की प्रार्थनाकलाएं एवं कार्यक्रमों पर विचार विमर्श हेतु आयोजित कार्यशाला "मथन-2007" में यह बिन्दु सामने आया है कि विभागीय कार्यों के क्रियान्वयन, आम जनता से जुड़े कार्यों के सम्पादन की प्रक्रिया के विभिन्न स्तरों पर त्वरित निराकरण हेतु, विभाग स्तर पर विचार किया जाना आवश्यक है।

2/- अधिकारों के प्रत्यायजन एवं विकेंद्रीकरण की दिशा में शासन के अधिकांश विभागों द्वारा सभागीय कार्यों की पुनर्स्थापना कर शासकीय कार्यों के सम्पादन/निर्णय लेने के स्तरों की संख्या में कमी की गई है।

3/ अतः सभी विभागों से अपेक्षा है कि वे अपने विभागों में आम जनता से जुड़े प्रचलित कार्यक्रमों/सेवाओं के सम्बन्ध में निर्णय लेने के स्तरों में कमी करने का प्रयत्न अपने स्तर पर समीक्षा करें एवं कार्य की गुणवत्ता प्रभावित न हो इस बात को ध्यान में रखते हुए निर्णय लेने के स्तरों में कमी हेतु शासकीय एवं विभागीय अधिकारों के सचित स्तर पर प्रत्यायोजित किया जाना के सम्बन्ध में विचार कर निर्णय लें।

(सचिव)  
(सचिव के निदेशार्थ)  
अवर सचिव

क्रमांक एफ: 11-14/2007/एक/9(सु0 प्र0)

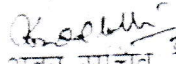
प्रतिलिपि—

1. राजस्व विभाग, मुख्य कार्यालय, ग्वालियर, जवेलपुर,
2. सचिव, लोकायुक्त, मध्यप्रदेश, भोपाल,

सामान्य प्रशासन विभाग  
भोपाल, दिनांक 31 मार्च, 2008



- / 2 /
3. सचिव, मध्यप्रदेश लोक सेवा आयोग, इंदौर,
  4. महानिदेशक, प्रशासन अकादमी, भोपाल,
  5. सचिव, महामहिम राज्यपाल राजभवन, भोपाल,
  6. प्रमुख सचिव, मध्यप्रदेश विधानसभा, भोपाल,
  7. सचिव, मुख्यमंत्री सचिवालय, मध्यप्रदेश भोपाल,
  8. मुख्य निर्वाचन पदाधिकारी, भोपाल,
  9. सचिव, मध्यप्रदेश निर्वाचन आयोग, भोपाल,
  10. सचिव, मध्यप्रदेश सूचना आयोग, भोपाल,
  11. अध्यक्ष, व्यावसायिक मंडल, भोपाल,
  12. महाधिवक्ता / उप महाधिवक्ता, मध्यप्रदेश उच्च न्यायालय, जबलपुर / खंडपीठ ग्वालियर / इंदौर,
  13. प्रमुख सचिव / सचिव / अपर सचिव / उप सचिव / अवर सचिव, मध्यप्रदेश, म0 प्र0 शासन, सामान्य प्रशासन विभाग, मंत्रालय,
  14. सचिव, मुख्य सचिव कार्यालय, मंत्रालय,
  15. संयुक्त संचालक, जनसम्पर्क, मंत्रालय, भोपाल,
  16. संचालक, राष्ट्रीय सूचना केन्द्र, विद्याचल भवन, भोपाल की ओर सूचनार्थ एव आवश्यक कार्रवाई हेतु प्रेषित।

  
अवर सचिव, 21/2/08  
सामान्य प्रशासन विभाग