

BEFORE THE STATE INFORMATION COMMISSION
PANAJI – GOA

Appeal No: 89/2007.

Shri John Nazareth,
House No. 71,
Gauchem Bhatt,
Merces, Ilhas _ Goa.

.... Appellant.

V/s

1. The Chief Electrical Engineer,
Electricity Department,
Vidhyt Bhavan,
Panaji – Goa.

.... Respondent No. 1

2. The State Public Information Officer,
O/o. The Chief Electrical Engineer,
Vidhyt Bhavan,
Panaji – Goa.

.... Respondent No. 2

CORAM:

Shri A. Venkataratnam
State Chief Information Commissioner
&
Shri G. G. Kambli
State Information commissioner

(Per G.G. Kambli)

Dated: 24/4/2007.

Appellant in present.

Adv. K. L Bhagat for the Respondent.

J U D G M E N T

The short point that rises for our consideration in this 2nd appeal is whether the Respondent No. 2 malafidely delayed in providing the information to the Appellant and whether he or any other officer is liable for imposition of penalty for such delay and for recommending disciplinary action.

2. The facts leading to this 2nd appeal are that the Appellant vide application dated 23/6/2006 sought the information from the Respondent No. 2 as to whether Electric connection has been given by the Department for the building named St. Ann's Apartment which is under construction under Survey No. 14/2 at Morombi-O-Pequeno village also known as

...2/-

Gauchem Bhatt, Mercedes, and more particularly the shop No. 2 on the ground floor of the said building, which is being constructed by one Mr. Charles De Souza, Proprietor of M/s Finesse Constructions. The request was made under the Right to information Act, 2005 (for short the Act) the necessary application fee of Rs. 10/- was also paid by way of cheque.

3. The said application of the Appellant was forwarded by the Respondent No. 2 to the Executive Engineer Div(I)(ONM) Panaji vide letter dated 28/6/2006 under intimation to the Appellant. The Executive Engineer Panaji, in turn forwarded the application of the Appellant along with application fees to the Assistant Engineer sub div III® Bambolim under Intimation to the Appellant.

4. According to the Appellant, the 30 days period expired on 20/2/2006 and therefore he preferred the first appeal before the Respondent No. 1 against the deemed refusal, on 14/8/2006 praying interalia for the supply of information and for the imposition of the penalty at the rate of 250/- per day delay in terms of the provisions of section 20 (1) of the Act. The Appellant thereafter received the letter dated 17/8/2006 from the Assistant Engineer sub Div III(I) Bambolim informing that domestic connection has been released to M/s Charles De Souza, to the house bearing No. SH-2 at Mercedes, the premises which were shown by the applicant and located on the ground floor of the building known as St. Ann's apartment, based on the NOC issued by the village Panchayat of Mercedes vide letter dated 23/10/2005 on completion of all departmental formalities.

5. The Appellant states that the Village Panchayat of Mercedes had informed the Appellant that the Panchayat has not issued any occupancy certificate to Mr. Charles De Souza for the building in survey No. 14/2 at Morombi-O-Pequeno and that the village Panchayat Secretary has informed him that the NOC issued by the Panchayat was not for the proposed building in Survey No. 14/2 of Morombi-O-Pequeno Mercedes but for the premises situated at Vaddy Mercedes.

6. The first Appellate Authority by his Order dated 28/11/2006 disposed off the appeal stating that the information was provided to the Appellant and that there was no intentional delay caused by the Respondent No. 2 in furnishing the information to the Appellant. It is against this order the present 2nd appeal is filed.

7. The case of the Appellant is that the Assistant Engineer sub Div III(R) Bambolim has deliberately and intentionally delayed in providing the information to the Appellant because the said Assistant Engineer has released domestic connection to an incomplete commercial establishment. Therefore, the Respondent no. 2 is liable for the delay under section 20(1) of the Act. The Respondent no. 1 filed the affidavit-in-reply. The Respondent No. 1 submitted that this was the first application received by the Respondent No. 2 under the Act and that the Respondent No. 2 was not aware of the procedure to be followed under the Act as he was not Law graduate or no proper training was imparted to him by the department. He therefore submitted that with bonafide intention and in order to avoid the delay in furnishing the information to the Appellant, the Respondent No. 2 forwarded the application to the Executive Engineer who in turn forwarded the same to the Assistant Engineer sub Div III(R) Bambolim along with the application fee. Admittedly, the application of the Appellant was received on 23/6/2006, which was forwarded by the Respondent No. 2 to the Executive Engineer on 28/6/2006 who in turn forwarded the same to the Assistant Engineer sub Div III(R) Bambolim under the letter dated 3/7/2006. The information sought by the Appellant was not available in the Office record of the Respondent No. 2 or in the Office of the Executive Engineer Panaji but the same was available in the Office of the Assistant Engineer Sub Div III (R) Bambolim. The Electricity connection was also released by the Assistant Engineer sub Div III (R) Bambolim. This being the position, there has been a delay on the part of Assistant Engineer in providing the information sought by the Appellant. No doubt, the Respondent No. 2 being the PIO is responsible for providing the information to the Appellant. But here in this case the Respondent No.2 forwarded the application to the Executive Engineer who in turn forwarded the same to the Assistant Engineer. The Respondent No. 2, has acted on the application of the

Appellant and no malafide can be attributed to the Respondent No. 2. However, the Respondent No.2 being the PIO ought to have perused the matter with the Executive Engineer/Assistant Engineer.

8. In the instance case the electricity connection was released by the Assistant Engineer Sub Div III(R) Bambolim allegedly to the incomplete commercial building as domestic connection. The Appellant during the course of argument submitted that the rate of charges for domestic and commercial purpose are different and by releasing the electricity connection as domestic for commercial establishment, the Respondent caused loss to the Government exchequer. The Application of the Appellant was forwarded to the Assistant Engineer by the Executive Engineer under letter dated 3/7/2007 and the Assistant Engineer sent the reply only on 17/8/2006. Thus there was an delay at the level of the Assistant Engineer Sub Div III(R) Bambolim for which no explanation has come either from the Respondent No. 2 or from the concerned Assistant Engineer. The information was available with the Assistant Engineer Sub Div (III (R) Bambolim and the Respondent No.2 directed the Executive Engineer who in turn directed the Assistant Engineer to provide the information to the Appellant. The Assistant Engineer ought to have submitted the required information to the Respondent No. 2 immediately but the said Assistant Engineer did not act. We therefore treat the said Assistant Engineer Sub Div III (R) Bambolim as a PIO for the purpose of causing delay in providing information to the Appellant deliberately and malafidely in terms of section 5 (4) and (5) of the Act and hereby give notice to the said concerned Assistant Engineer to show cause as to why the penalty of Rs. 250 per day delay should not be imposed on him for causing a delay deliberately and with malafide intention. The reply to the show cause notice is to be filed on 3/5/2007 at 11.00 a.m.

Shri G. G. Kambli
State Information Commissioner

Shri A. Venkataratnam
State Chief Information Commissioner