

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 435 OF 2007

1. Pushpalata Arlekar,
Dy. Director of Administration,
PWD, Panaji-Goa.
2. A.M. Wachasunder,
Principal Chief Engineer,
PWD, Altinho, Panaji-Goa. Petitioners

V/s

1. Goa State Information Commission,
at Panaji, constituted with two members;
- 1(a) Shri A. Venkataratnam
- 1(b) Shri G.G. Kambli
having their Office at ground floor,
Shrama Shakti Bhavan,
Patto Plaza, Panaji, Goa.
2. Joao J. Caldeira,
La Campala Colony,
Miramar, Goa – 403 001. ... Respondents

Mr. S.R. Rivonkar, Government Advocate for the Petitioners.

Respondent No.2 in person.

CORAM : N.A. BRITTO, J.
DATE : 12th MARCH, 2009

ORAL JUDGMENT :

Heard Shri Rivonkar, the learned Government Advocate on behalf of the petitioners and respondent no.2 in person.

2. This Writ Petition is directed against the orders dated 30/03/2007 and

27/06/2007 of the Goa State Information Commission. This petition is filed by the petitioners who are the Deputy Director of Administration and Principal Chief Engineer, PWD, Panaji-Goa. Petitioner No.1 was stated to be the Assistant Public Information Officer, but, Shri Rivonkar, the learned Government Advocate concedes that there is no such authority under the scheme of the Act (Right to Information Act, 2005).

3. As regards the order dated 27/06/2007, the learned Goa State Information Commission has held respondent no.2 (petitioner no.1, herein) and respondent no.3 (the Public Information Officer, Superintending Surveyor of Works, PWD), Panaji as persons responsible for delay in not providing complete information to the appellant (respondent no.2, herein) within the time limit specified in sub-section (1) of Section 7 of the Act and proceeded to impose a penalty of Rs. 10,000/- on respondent no.2 (petitioner no.1, herein) and Rs. 5,000/- on Shri A. Parulekar, the Public Information Officer and Superintending Surveyor of Works, PWD, Altinho, Panaji. The said Public Information Officer, Shri Parulekar has not challenged the said order imposing penalty of Rs. 5,000/- upon him.

4. As far as the penalty upon the petitioner no.1 is concerned, there is no dispute that at the relevant time, the Public Information Officer in the office of the Principal Chief Engineer, PWD, was the Superintending Engineer, as

stated by Shri Rivonkar. The respondent no.2 by his application dated 16/11/2006 sought certain information as regards filling of 33 vacancies of Junior Engineers from the said Public Information Officer i.e. Superintending Engineer. The application was marked to the petitioner no.1, herein. As the respondent no.2 did not obtain any information within the period of 30 days as required under the Act, respondent no.2 proceeded to file an appeal to the first appellate authority on 21/12/2006 and on that day it was the Principal Chief Engineer who was the first appellate authority. With effect from 22/12/2006, it is the petitioner no.1 who was designated as Public Information Officer, and Superintending Surveyor of works, PWD, who was designated as First Appellate Authority. In my view, who ought to have been penalised for not providing the information sought by respondent no.2 by his application dated 16/11/2006 within a period of 30 days, was the said Superintending Engineer of PWD who was the Public Information Officer. Petitioner no.1 herein was acting only as his subordinate in his other official capacity and could not have been penalised for not performing the duties imposed upon a Public Information Officer under the Act. Respondent No.2 has drawn my attention to sub-section 5 of Section 5 of the Act and has submitted that petitioner no.1 was required to render all assistance to the Public Information Officer – Superintending Engineer and it is she who malafidely did not furnish the information. The learned Commission in para 8 has come to the conclusion and, in my view rightly, that petitioner no.1

(respondent no.2) was not a separate Public Information Officer and therefore the transfer of the application by Superintending Engineer (Respondent No.3?) under Section 6(3) of the Act itself was wrong and illegal. The learned Commission in para 9 has also held that “it is the exclusive statutory responsibility of respondent no.3, (or is it Superintending Engineer) being Public Information Officer to dispose off the application dated 16/11/2006 under Section 7 of the Act within the statutory period of 30 days.” The learned Commission has further held that petitioner no.1/respondent no.2 had no jurisdiction to decide the application dated 16/11/2006 as she was not the Public Information Officer prior to 22/12/2006. In para 19 of Order dated 27/06/2007, the learned Commission has held that the Act does not empower the Public Information Officer to delegate his powers to the Assistant Public Information Officer and the Public Information Officer has to take its own decision. If these be the findings of the learned Commission, then petitioner no.1/respondent no.2 could not be either directed to give the information nor penalised for having not given the same.

5. In the light of the above, the petition deserves to succeed partly and the impugned order dated 27/06/2007 to the extent it imposes penalty of Rs. 10,000/- on petitioner no.1 herein, deserves to be set aside.

6. I have already stated that respondent no.3 i.e. Shri Parulekar,

Superintending Engineer of Works has not challenged the order. However, the conclusion arrived at by the learned Commission that the Principal Engineer as a first appellate authority, ought to have proceeded to decide the appeal within 30 days in terms of Section 19(c) of the Act cannot be faulted. The Commission has also noted that there was no order extending the period of 30 days and the time of 30 days had expired on 19/01/2007. The Commission has held that the order/memo dated 22/12/2006 was not retrospective, and that finding also cannot be faulted.

7. The application seeking information was filed on 16/11/2006 and the Public Information Officer admittedly did not provide the information within 30 days as required by sub-section (1) of Section 7 of the Act and therefore respondent no.2 was entitled to file a first appeal in terms of sub-section (1) of Section 19 of the Act which he did on 20/12/2006 and which was not disposed of by the First Appellate Authority i.e. Principal Chief Engineer within 30 days or extended period of 45 days. The second appeal was filed on 17/01/2007. It is contended on behalf of the petitioners that the second appeal was premature but this contention cannot be accepted, because the second appeal before the Commission was filed on 17/01/2007 after the respondent no.2 received letter dated 10/01/2007 from the office of Principal Chief Engineer (First Appellate Authority) that his application dated 20/12/2006 (i.e. appeal) was rejected. The observations of the Commission

as regards petitioner no.1/respondent no.2 in not disposing application dated 16/11/2006 cannot be made applicable to letter dated 10/01/2007. Respondent no.2 was bound to believe, on the basis of the said letter dated 10/01/2007, signed by Dy. Director of Administration that his appeal was rejected by the Principal Chief Engineer. Respondent no.2 was therefore fully justified in filing the second appeal on 17/01/2007 and such an appeal could not have been said to be premature.

8. In the light of the above, the petition succeeds partly. The order imposing penalty on petitioner no.1 is hereby set aside. There is otherwise no merit in this petition and accordingly the same is dismissed.

N.A. BRITTO, J.

NH/-