

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 205/2007.

Shri A. A. Parulekar,
Superintending Engineer II,
Public Works Department,
Altinho, Panaji, Goa. ... Petitioner.

V/s

1. Goa State Information
Commission through
Shri A. Venkataratnam,
State Chief Information
Commissioner, Ground floor,
Shram Shakti Bhavan,
Patto, Panaji, Goa.
2. Shri Sushant S. Naik,
H.No. 103, Costi, Kalay,
Sanguem, Goa. ... Respondents.

Petitioner- party in person.

None present for Respondent No. 1.

Learned Advocate Mr.N.N.Dessai for Respondent No. 2.

Coram : A. H. Joshi, J.

Dated: 17th September, 2009.

J U D G M E N T

1. This is a writ petition by a government

officer who was Public Information Officer, on assumption of the charge of Superintending Surveyor of Works.

2. Respondent No. 2 herein filed application for information on 31.8.2006.

3. Admittedly, the application for information was given in the office of Assistant Engineer, P.w.D Works Division, Sanguem, which is within the jurisdiction of the petitioner.

4. As the information was not supplied, the respondent No. 2 carried an appeal. Direction was given for supplying information.

5. The State Information Commission found that the information was still not supplied and hence issued a notice of show-cause. The show-cause-notice was replied and explanation was offered by the petitioner.

6. The defence taken by the petitioner before the respondent No. 1, is that the application for information was not forwarded to him and he was not

aware of the said application, and therefore he cannot be blamed for failure to supply the information within time or towards delay.

7. The State Information Commission found the petitioner guilty and levied upon him penalty of Rs. 250/- per day for 67 days, however commuted it to Rs. 5000/- with direction to the Director of Accounts to refer the amount to credit it in appropriate head of account of P.W.D.

8. The finding which is the basis of this order is seen in para 3 of impugned judgment, which reads as follows:

" In this case the Asst. Engineer, though not the APIO, is an employee of the same department namely, roads wing of the PWD, has his office in the same Taluka where the Appellant lives, his office only has done the work of construction of roads in Sanguem Taluka for which the information is asked for and finally he has submitted the information to his superior, namely, Executive Engineer who was the APIO at the relevant time. It is not as if the Appellant has given his application to a passer by or a stranger. The argument of Shri Anil A. Parulekar, to the effect that he is not personally responsible for supplying the information to the Appellant as the application is neither given to the PIO nor to the APIO, is therefore, rejected."

(quoted from page 27-28 of paper book)

9. Above quoted observations explicitly reveal that the application never reached the petitioner herein.

10. It is even not the case of the respondent No. 2 that otherwise i.e. through proper channel or by direct delivery thereof, the application and/or the order to supply information were made available and brought to the notice of the petitioner herein, yet he has failed to comply.

11. The order of penalty for failure is akin to action under Criminal Law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate.

12. Unless and until it is borne on record that any officer against whom order of penalty for failure is sought to be levied and had occasion to comply with the order, and has no explanation or excuse available worth satisfying the forum, possess the knowledge of the order to supply information, an

order of penalty cannot be levied.

13. In the present case the order of penalty is based on assumption that the petitioner is 'supposed to have known'. No such fiction is created by law nor on facts it is held that the defence is fake.

14. In this premise, the order of penalty is unjust and deserves to be set aside being unsupported by law.

15. In the result, rule is made absolute. The impugned order is set aside.

16. Parties are directed to bear own cost.

A. H. JOSHI, J.

MF/-