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Bharti Airtel Ltd. Vs State of Kerala, The Director of Panchayats and The Director of Municipalities

WP (C) No. 32225 of 2007 (J)

Court: High Court Of Kerala

Date of Decision: Nov. 5, 2007

Acts Referred:

Kerala Municipality Building Rules, 1999 â€" Rule 142, 22, 22(3)

Hon'ble Judges: Pius C. Kuriakose, J

Bench: Single Bench

Advocate: Santhosh Mathew, for the Appellant; No Appearance, for the Respondent

Judgement

Pius C. Kuriakose, J.

The petitioner is M/s. Bharti Airtel Limited, a company which has been granted licence by the Department of

Telecommunication, Government of India for conducting Cellular Mobile operations in various states including Kerala. According to the petitioner,

there is inordinate delay on the part of the local authorities within whose area telephone towers (base transmission stations) have been installed by

the petitioner company in the matter of issuance of use certificates under Rule 142 of the Kerala Municipality Building Rules 1999 notwithstanding

the submission of the completion certificates in Forms E and F.

2. Rule 22 of the Kerala Municipality Building Rules deals with completion certificate, development certificate and occupancy certificate as regards

the ordinary constructions within areas where the Kerala Municipality Building Rules are applicable. Rule 22 (3) provides as follows:

22(3). The Secretary shall, on receipt of the completion certificate and on being satisfied that the construction or reconstruction or addition or

alteration has been carried out in conformity with the permit given, issue occupancy certificate in the form in Appendix H (not later than fifteen

days from the date of receipt of the completion certificates) Provided that if no such occupancy certificate is issued within the said fifteen days, the

owner may proceed as if such occupancy certificate has been duly issued to him. (proviso is introduced into the rules by S.R.O. No. 170/2001

w.e.f.22.2.2001)

2. Rule 142 of the of the Kerala Municipality Building Rules deals with completion certificates in respect of telecommunications towers and in its

present form was introduced into the Rules by the same SRO. Rule 142 is provides as follows:

142 Completion Certificate:-(1) After completion of the work of the telecommunication tower or pole structures and accessory rooms as per

permit, the applicant and the engineer shall submit to the Secretary completion certificates as in Form E and F respectively along with a certificate

of structural safety/ stability of the tower and the building, if the tower or pole is constructed over a building.

(2). The Secretary, shall, if satisfied that the work has been completed as per permit, issue use certificate as in Appendix H allotting a number,

included in a different series from the allotted to buildings, on the basis of which the authorities concerned may allow power connection, etc. for use

of the service.

3. Non insistence of a time frame as in the case of Rule 22 (3), according to the petitioner, is resulting in considerable hardship to the petitioner

since there is inordinate delay on the part of the local authorities in issuing use certificates. Without use certificate from the local authority

concerned, the petitioner and similar companies who are licencees of the Department of Telecommunication are being put to considerable

inconveniences. Raising various grounds and enlisting as many as 422 local authorities with whom applications for use certificate are pending the

petitioners pray for the following relief in this writ petition.

i). Issue a writ in the nature of mandamus or any other appropriate writ, order or direction commanding the respondents to issue necessary

instructions to the Secretaries of Panchayats/Municipalities/Corporations to issue use certificate under Rule 142 of the Kerala Municipality Building

Rules 1999, within two weeks from the date of submission of Form E and Form F by the petitioner.

4. Even though notice was served on respondents 1,2 and 3 no counter affidavit has been filed. Heard Sri.Santhosh Mathew, the learned Counsel

for the petitioner and Sri.K.J.Muhammed Anzar, the learned Government who appeard for the respondents. Having considered the grounds raised

and having examined the statutory provisions, I am of the view that there is every justification for granting the relief sought for since in my opinion it

was only by an oversight that time frame similar to the one which obtains in Rule 22 (3) has not been incorporated in Rule 142. The writ petition

will stand allowed to the following extent.

Till such time as the Government amends Buildings Rules 142, so that the same will be inconformity with Rule 22 (3), there will be a direction to

the respondents to issue necessary instructions to the Secretaries of the Municipalities, Panchayats and the Corporations in the State enlisted in the

writ petition to issue use certificate under Rule 142 of the Kerala Municipalities Building Rules 1999 within 30 days of the date of submission of

Forms E & F by the petitioner.