

**BEFORE THE KERALA STATE HUMAN RIGHTS COMMISSION,
THIRUVANANTHAPURAM**

**Present: Mr.Justice N.Dhinakar,
Hon'ble Chairperson**

Dated this the 5th May, 2009.

H.R.M.P.No HRMP 599/09

Petitioner : Dr.M.A. Pillai,
Athira, Kanam.P.O.,
Kottayam – 686 515.

Respondent :

ORDER

The petitioner and the Secretary, Vazhoor Grama Panchayat are present. The complaint of the petitioner is that a mobile tower being erected within the jurisdiction of Vazhoor Grama Panchayat by the BSNL is causing health and other hazards to the petitioner and neighbours and Vazhoor Grama Panchayat, on the complaint of the petitioner, took no action.

A report was called for from the Secretary, Vazhoor Grama Panchayat. In the report submitted by the Secretary, Vazhoor Grama Panchayat it is stated that the General Manager, BSNL, applied for erecting a mobile tower on 24.09.07 and consent was issued for construction on 21.11.07 as there were no violation of Kerala Municipal Building Rules. According to the report the petitioner filed a petition on 9.1.09 against the erection of the tower and the said petition was taken up for consideration in the meeting convened by the Panchayat on 27.1.09. According to the

report the request of the petitioner was rejected at the meeting as it was received very belatedly and since the construction of the BSNL tower was almost complete. It is also stated in the report that the Panchayat has no power to interfere with the construction of the tower and along with the report the order of the High Court passed in WP© No.21724 of 2006(J) and in WP© No.21528 of 2006(K) are also seen annexed. The above orders of the High Court show that the High Court in those Writ Petitions considered similar disputes while considering the orders passed by the Ombudsman for Local Self Government Institutions and after considering the issues came to the conclusion that the orders issued by the Ombudsman have to be quashed and accordingly quashed. In fact the High Court also referred to the principles laid down by a Division Bench of the High Court in Reliance Infocom Ltd. V. Chemancherry Grama Panchayat (2006 (4) KLT 695).

In paragraph 3 of the Writ Petition in WP© No.21528 of 2006 (K) the principles laid down in Reliance case by the Division Bench are relied and they are extracted below:

“We notice that the Panchayat has as on today no scientific data or relevant material to cancel the licence already granted on the ground that the installation of the Tower would cause any health hazards. Licence granted has been cancelled by the Panchayat based on an apprehension that the radiation may cause health hazards to the people of the locality. Further Ext.P5 also says that installation of generator would cause sound pollution. Petitioner has not installed

any generator as on today and if the installation of generator would cause any sound pollution, evidently Pollution Control Board can give appropriate direction and the petitioner will have to obtain necessary consent from the Pollution Control Board for installation of generators, so that it would not cause any sound pollution. So also, if the installation of Tower and the emission of electromagnetic waves causes any air pollution, affecting human health the Pollution Control Board can take appropriate measures under Air (Prevention and Control of Pollution) Act 1991”

The petitioner disputes the statement of the Panchayat that the construction of the tower is almost complete and according to him the work of the tower has just commenced. The request of the petitioner is to direct the BSNL authorities not put up the tower at the present place and that it could be put up at a distance of 400 meters from the present location. I am afraid that no such direction can be given by me in view of the judgement of the High Court and this Commission a statutory body is bound by the orders passed by the High Court.

In the above circumstances the petition is closed and if the petitioner is aggrieved against the erection of the tower it is for him to approach the judicial forum to have his grievance redressed.

**Justice N. Dhinakar,
Chairperson.**

