

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

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

Dated this the 17th March, 2010.

H.R.M.P.No.760 of 2010

Petitioner : Janardhanan Nair,
President,
Ramachamvila Residents Association,
Attingal.

Respondent :

ORDER

The complaint of the petitioners is about the proposed erection of a mobile phone tower by the Aircel company in his residential area causing health problems and other nuisance to the residents.

In the report submitted by the Secretary, Attingal Municipality, it is stated that on 24-2-2009 the Aircel Dishnet Wireless Limited, Kochi, filed an application before the Municipality seeking permission to erect a mobile phone tower and the same application was filed in compliance with the provisions as per the Kerala Municipality Building Rules (KMBR), 1999, and that the applicant has remitted the required fee also. According to the report, the proposed mobile phone tower has a distance of more than 20 meters from the 11 K.V. Line. The report assures that the consent for erection of the tower will be granted only in accordance with law.

It is to be noted at this stage that a Learned Judge of the High Court of Kerala while considering a similar complaint in WP (C) No.21724 of 2007 (J) has held that 'on the basis of the report submitted by the World Health Organization that the "potentiality" of the mobile telephone towers to cause risk to human lives due to emission is relatively

low when compared to radio towers' directed the Panchayat to consider the licence application of the petitioner in the said Writ Petition for erecting a mobile tower'.

A Division Bench of the High Court of Kerala took a similar view in Reliance Infocom Ltd. Vs. Chemmenchery Grama Panchayat (2006 (4) KLT.695). The Division Bench of the High Court in the above judgment held as follows:

“We notice that the Panchayat has as on today no scientific data or relevant materials 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 Exbts 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 generators, so that it would not cause any sound pollution. So also, if the installation of Tower and the emission of electromagnetic waves cause any air pollution, affecting human health the Pollution Control Board can take appropriate measures under Air (Prevention and Control of Pollution) Act 1991”.

In WP (C) No.13130 of 2009 (I) and W P (C) No.4444 of 2009 and other connected cases a Division Bench of the Kerala High Court has referred certain questions relating to the subject matter of erecting mobile towers to a Larger Bench by framing two questions and the said matter is still pending.

In view of the above, no orders can be passed by this Commission and if the petitioner is aggrieved he has to approach the High Court of Kerala and implead himself, with the permission of the High Court, in the cases referred to the Larger Bench, as the said subject matter is now subjudiced.

The petition is hence closed. Send a copy of this order to the petitioner.

Justice N. Dhinakar,
Chairperson.

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